108-18

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 839.

THE CHICAGO AND ALTON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE WIGGINS FERRY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED MAY 13, 1882.

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a The United States of America to the Wiggins Ferry Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the Chicago and Alton Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.]

SAMUEL TREAT,
Judge United States District Court,
Eastern District of Missouri.

Service acknowledged Ap'l 13, 1882.

GLOVER & SHEPLEY,
For Wiggins F'y Company.

(Indorsed:) 1998. United States circuit court, eastern district of Missouri. Wiggins Ferry Co. vs. Chicago & Alton R. R. Co. Citation. Filed April 13, 1882. M. M. Price, clerk.

b UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, at the March term, 1882, thereof, between the Wiggins Ferry Company, plaintiff, and the Chicago and Alton Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Chicago and Alton Railroad Company, defendant, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-two.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

M. M. PRICE,
Clerk Circuit Court United States,
Eastern District of Missouri.

Allowed by—

SAMUEL TREAT, *Judge.*
By A. P. SELBY, *Deputy.*

c . *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness wherof I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 9th day of May, A. D. 1882.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *D. C.*

(Indorsed:) No. 1999. United States circuit court, eastern district of Missouri. Wiggins Ferry Co. vs. Chicago & Alton R. R. Co. Writ of error to the circuit court of the U. S., east. dist. of Missouri. Returned and filed day of , 187 . , clerk.

1 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

Be it remembered that on the twentieth day of March, A. D. 1882, at a regular stated term of the circuit court of the United States, in and for the eastern district of Missouri, begun and held at the city of St. Louis, in said district, on said last named day, the following among other proceedings were had and appear of record, to wit:

WIGGINS FERRY COMPANY, PLAINTIFF,
vs.
CHICAGO AND ALTON RAILROAD COMPANY, DEFENDANT. } 1999.

Now comes the defendant by attorneys and files transcrapt from the St. Louis circuit court and enters appearance; and thereupon the said plaintiff by attorneys files motion to remand this cause to the State court;
2 which transcript is in words and figures following, to wit:

Transcript.

STATE OF MISSOURI,
City of St. Louis, ss:

Be it remembered that heretofore, to wit, on the 19th day of September, 1881, there was filed in the office of the clerk of the circuit court within and for the city of St. Louis a petition, which is in the words and figures following, to wit:

3 *Petition.*

In the circuit court of the city of St. Louis, December term, 1881.

THE WIGGINS FERRY COMPANY, PLAINTIFF,
vs.
THE CHICAGO AND ALTON RAILROAD COMPANY, defendant.

STATE OF MISSOURI,
City of St. Louis, ss:

The Wiggins Ferry Company, plaintiff, states that it is a corporation existing by force of laws of the State of Illinois, exercising its ferry privileges and franchises on the Mississippi River, between the city of St. Louis, in the State of Missouri, and the shore of said river in the State of Illinois, opposite the city of St. Louis, as will appear by several acts of the legislature of Illinois, copies whereof will be filed herewith, the first of which was approved February 11, 1853, and the last of which was in force on and after June 13, 1867; that the Alton & St. Louis Railroad Company is a corporation, and was chartered by the legislature of the State of Illinois by an act of the legislature of the State of Illinois, entitled "An act to incorporate the Alton & St. Louis Railroad Company," approved January 4, 1859; that it accepted its said charter, and by virtue thereof had power, authority, and franchises to construct, complete, own, and operate a railroad, with double or single track, from Alton to any point opposite the city of St. Louis, Missouri. And the plaintiff states that the said corporations, created and known as the Alton & St. Louis Railroad Company, also had power, authority, and franchises to purchase, and did purchase of the Sangamon & Northwest Railroad Company, a corporation existing by the laws of the State of Illinois, so much of the branch of said railroad of said company as was situated between Alton, in Madison County, in the State of Illinois, and Bloody Island, opposite the city of St. Louis, in the State of Missouri, and to own and to operate the same; and the said Alton & St. Louis Railroad Company had power, authority, and franchises to unite its railroad with any other railroad then or thereafter constructed, upon such terms as should be mutually agreed upon between the companies so connecting, and also had power, authority, and franchises to lease its railroad, with benefit of all the rights, privileges, and franchises, to any other corporation, person or persons; and for the purpose aforesaid, power was possessed by said company to make, execute, and deliver all such contracts and instruments of writing as should be necessary for said purposes. And the plaintiff states that said Alton & St. Louis Railroad Company, prior to the twenty-eighth day of April,

4 1864, and on that day, was the owner and proprietor of a railroad extending from the city of Alton, in Madison County, in the State of Illinois, to a point on Bloody Island, in said State of Illinois, opposite said city of St. Louis, in the State of Missouri, and was operating and using said railroad according to the privileges and franchises secured by the charter of said last-mentioned corporation. The plaintiff states that the said Chicago & Alton Railroad Company is a corporation, and was chartered by the legislature of the State of Illinois by an act entitled "An act to incorporate the Chicago & Alton Railroad Company," approved February 18, 1861, and said charter was duly accepted, with power, authority, and franchises to acquire for themselves and their associates, by purchase, transfer, or conveyance, all singular the railroad and all the property, real and personal, with the corporate rights, franchises, privileges, and effects then or theretofore belonging to or owned by or vested in the Alton & Sangamon Railroad Company, afterwards called the Chicago & Mississippi Railroad Company, and also the Chicago, Alton & St. Louis Railroad Company, and the said Chicago & Alton Railroad Company did acquire the same as authorized; and the said Chicago & Alton Railroad Company, long prior to April 28, 1864, had authority, power, and franchises to erect, use, and make arrangements for the transportation of freight and passengers carried or to be carried upon said railroad to and from St. Louis, in the State of Missouri, and for that purpose to construct, own, and use such boat or boats as should be necessary. That on the twenty-eighth day of April, 1864, a certain contract and articles of agreement were made and delivered by and between the said corporations, to wit, the said Wiggins Ferry Company and the said Alton & St. Louis Railroad Company, whereby, after reciting, among other things, that both said last-mentioned corporations were anxious to secure permanently to themselves and to their assignees respectively the objects therein mentioned—that is to say, said Wiggins Ferry Company to secure the ferrying business between the Illinois & Missouri shores, opposite the city of St. Louis, of all freights and passengers to be carried by said Alton & St. Louis Railroad Company, and also the further sum of $2,500 per annum, to be paid by said Alton & St. Louis Railroad Company to the plaintiff as therein specified, and the said Alton & St. Louis Railroad Company to secure for plaintiff proper facilities for depot grounds for the operation and doing the business of their said railroad at its western terminus on the Mississippi River, opposite said city of St. Louis, it was witnessed for the purpose of carrying out the aforementioned objects that said parties had agreed and covenanted with each other as follows: that is to say, the plaintiff, in consideration of the covenants and stipulations of the said Alton & St. Louis Railroad Company, contained in said articles and to be observed and fulfilled by said railroad company, did give, grant, and convey to said Alton & St. Louis Railroad Company and its assigns the right to construct, maintain, and use in, through, and over the piece or parcel of ground therein described, all such railroad tracks, depots, warehouses, and other buildings and erections as the said railroad company should find to be necessary or convenient to be constructed, maintained, and used for the purpose of transacting the business of said railroad company, and to keep thereon without disturbance all property of every description belonging to, or which might be in the possession, or charge, or custody of said railroad company, and

to take upon and over said piece of ground all persons and property, and to use the same in the transaction of the business of said railroad company as it might find necessary or convenient.

Said piece or parcel of ground was situated on what was known as Bloody Island, in the county of St. Clair, in the State of Illinois, opposite to the city of St. Louis, in the State of Missouri, having a front on the west end, or towards the Mississippi River, of four hundred feet, by a depth eastwardly of fifteen hundred feet, and is described as follows, to wit: Beginning at a point two hundred and sixty feet from low-water mark of the Mississippi River on the southern line of the piece or parcel of land theretofore leased for depot purposes by said plaintiff to the Ohio & Mississippi Railroad Company, and running southwardly four hundred feet at the distance of two hundred and sixty feet from low-water mark, as aforesaid; thence eastwardly fifteen hundred feet on a line parallel with the south line of the piece or parcel of land leased as aforesaid to the Ohio &
Mississippi Railroad Company; thence northwardly four hun-
5 dred feet to a point coincident with the south line of the land leased as aforesaid to said Ohio & Mississippi Railroad Company, and fifteen hundred feet from the initial point; thence with that line to the place of the beginning, which piece or parcel of land is bounded as follows: On the west by a space of two hundred and sixty feet belonging to the plaintiff (which space of two hundred and sixty feet was, by said articles, to be used as therein specified); on the south side and east by lands of plaintiff; on the north in part by lands of plaintiff and the ground theretofore leased to said Ohio & Mississippi Railroad Company, it being understood that the south line of the land by said articles of agreement leased should be parallel to the south line of said land leased to said Ohio & Mississippi Railroad Company.

And the plaintiff, in and by said articles of agreement, in consideration of the covenants therein contained, did give and grant to the said Alton & St. Louis Railroad Company the right of way from the east end of said parcel of land, through and over their land in a northwesterly direction, towards the town of Brooklyn, in said county of St. Clair, said right of way not to exceed one hundred feet through the slough or former bed of the river and fifty feet on the main shore, to have and to hold to said Alton & St. Louis Railroad Company or its assignees, as therein mentioned, as long as the same should be used and employed for the uses and purposes mentioned in said articles and for no other use, forever.

And in consideration of said covenants the plaintiff, by said articles, did further agree with said Alton & St. Louis Railroad Company to furnish and maintain good and convenient wharf-boats and steam ferry-boats to do with promptness and dispatch all the ferrying required for the transit of passengers and freight coming from or going to said railroad or its assignee therein mentioned over the said river, navigation permitting, except that the plaintiff might abandon the business at any time by giving said railroad company six months' notice of its determination to do so, in which event the right of the said Alton & St. Louis Railroad Company to the possession of said parcel of ground should remain unaffected except as to the payment of said rent of $2,500 per annum, which was to be paid in any event. And in and by said articles it was further agreed by plaintiff with said Alton & St. Louis Railroad Company that the rates of ferriage to be charged on such freight and passengers should be reasonable; and if at any time said

railroad company should be dissatisfied with the rates charged by plaintiff and plaintiff should not be willing to reduce the same, the question at issue should be submitted to the decision of arbitrators, to be appointed as in said articles provided. And it was further witnessed in and by said articles that, in consideration of the lease aforesaid and the covenants entered into on the part of plaintiff, said Alton & St. Louis Railroad Company, for itself and its assigns, covenanted and agreed with plaintiff that it would always employ the plaintiff to transfer across said river all persons and property which might be taken across said river either way, to or from the Illinois shore, either for the purpose of being transported on said railroad or having been brought to said river (Mississippi) upon said railroad; and said Alton & St. Louis Railroad Company in said articles of agreement covenanted and agreed with the plaintiff that plaintiff and its legal representatives and assigns, owners of said ferry, should have the profits of the transportation of all such passengers, persons, and property taken across said river either way by said railroad company. And the said Alton & St. Louis Railroad Company further by said articles covenanted and agreed with plaintiff that no other than the plaintiff's ferry should ever at any time be employed (that is to say, used as an instrument by said railroad company or its assigns, as mentioned therein) to cross any passengers or freight coming or going on the said Alton & St. Louis Railroad. And the said Alton & St. Louis Railroad Company in and by said articles, in consideration of said lease, further covenanted and agreed with plaintiff to pay the plaintiff or its assigns the annual sum of twenty-five hundred dollars, to be made in quarterly payments, and to continue as long as the said Alton & St. Louis Railroad Company should under said lease continue to enjoy and possess the said piece or parcel of ground; and said Alton & St. Louis Railroad Company further agreed and covenanted with the plaintiff to pay all taxes and assessments, general and special, to which said
6 piece or parcel of ground might be subjected during the existence of said lease. And in and by said article of agreement it was stipulated and covenanted by the plaintiff with the Alton & St. Louis Railroad Company that the plaintiff would keep open the space of two hundred and sixty feet above described, lying between low-water mark of the Mississippi River and the western end of the piece or parcel of ground above described, to be used as a wharf and street, and which the said Alton & St. Louis Railroad Company or its assigns should have the right to use for the deposit of any property either coming or going as freight on said railroad, free and clear of any charge for wharfage; provided, however, that said property should not remain on said wharf a longer time than forty-eight hours from the time deposited thereon, but should it remain longer, then to be subject to the same charge for wharfage in favor of the plaintiff as if it belonged to individuals. And it was stipulated, agreed, and understood among the parties to said article, that the parcels of land therein described were to be used for the purposes of right of way, depots, and other buildings for the use of the said Alton & St. Louis Railroad Company, or for the same purpose by the Chicago & Alton Railroad, and for no other purpose whatever. And in and by the said articles of agreement it was further agreed and understood among said parties thereto that the said Alton & St. Louis Railroad Company should have the right to transfer and assign said agreement to the Chicago &

Alton Railroad Company aforesaid, in which event all the covenants, stipulations, and agreements therein contained should be as binding on the said Chicago & Alton Railroad Company as the same were on the said Alton & St. Louis Railroad Company, all of which, among other things therein contained, will more fully and at large appear from a duly certified copy of the said articles of agreement hereto annexed. (Exhibit No. 1.) That the said articles of agreement were signed and sealed respectively by the plaintiff, the said Wiggins Ferry Company, and the said Alton & St. Louis Railroad Company at the date thereof, and the execution thereof was duly acknowledged and recorded in the office of the recorder of conveyances, etc., for the county of St. Clair, in said State of Illinois.

The plaintiff states that on the twenty-eighth day of April, 1864, after the execution and delivery of the said articles of agreement and lease, the said Alton & St. Louis Railroad Company, for a valuable consideration, assigned by writing the said articles of agreement and lease to the said Chicago & Alton Railroad Company and their successors and assigns, together with all the right, title, and interest in and to the lands, tenements, and covenants therein mentioned, which the said Alton & St. Louis Railroad Company had by means thereof, subject, nevertheless, to the rents and covenants in said articles of agreement and lease contained; that the said assignment was duly acknowledged by the Alton & St. Louis Railroad Company, and duly recorded as aforesaid in respect to said articles of agreement. A copy of said agreement duly certified is filed herewith (Exhibit No. 2).

The plaintiff states that said agreement and lease, dated April 28, 1864, made by it with the Alton & St. Louis Railroad Company, was entered into between the parties thereto at the special instance and request of the said Chicago & Alton Railroad Company, and with an agreement already perfected between said Alton & St. Louis Railroad Company and the Chicago & Alton Railroad Company, that the same should be assigned by the Alton & St. Louis Railroad Company to said Chicago & Alton Railroad Company, and that the Chicago & Alton Railroad Company accepted said assignment as made and took possession of the leased premises, and have held and enjoyed the same ever since, and took upon itself the performance of all the covenants, obligations, and duties imposed thereby on the Alton & St. Louis Railroad Company.

The plaintiff states that by force of powers and franchises possessed by them respectively under the laws of Illinois, said Alton & St. Louis Railroad Company, on the sixteenth day of April, 1864, made, executed, and delivered to the Chicago & Alton Railroad Company a perpetual lease of its railroad, rights of way, tracks, bridges, fences, water-station, depots, depot grounds, engines, and structures, and all other properties completed or to be completed, and covenanted with said Chicago & Alton Railroad Company that the same so leased to them forever should be forever used and operated as part of the main line of the said Chicago & Alton Railroad, a copy of which perpetual lease is
7 hereto annexed, Exhibit No. 3; that by means of the premises the said defendant became and was made lessee and covenantor in the said lease and articles of agreement dated April 28, 1864, in the place and stead of said Alton & St. Louis Railroad Company; that the defendant, ever since April 28, 1864, has constantly admitted itself bound by

said articles and lease in the place of said Alton & St. Louis Railroad Company, has not only held and enjoyed the leased property, as assignee, under the lease, but has annually paid, voluntarily, as provided by said lease, said sum of $2,500 per annum, down to and including the quarterly installment falling due March 31, 1870; and did also pay, after suit by plaintiff, the said quarterly installments falling due prior to June 8, 1872; that said defendant paid nothing more on account of said quarterly installments from June 8, 1872, down to August 13, 1875, and for which amounts of rent, with all other breaches of said contract committed between said last-mentioned date, a suit by said plaintiff against said defendant is now pending in this court; that there was due and owing to plaintiff by defendant at the commencement of this suit said quarterly installments of rent falling due between the 13th day of August, eighteen hundred and seventy-five, and the commencement of this suit, and the same still remains wholly unpaid. And the plaintiff saith it has at all times since the execution and delivery of said articles, and the assignment thereof to the defendant of the execution and delivery of said lease to defendant, furnished, maintained, and had in readiness good and convenient wharf-boats and steam ferry-boats for the performance by it of said articles, and has performed on its part the said articles to the satisfaction of said defendant, and has always been ready and willing, navigation permitting, to do with promptness and dispatch all the ferrying for the transit across said river of all freight and merchandise, persons and passengers, coming from and going to said defendant's railroad as aforesaid, and has in all things kept and performed all its agreements in said articles. Yet the plaintiff has not had the ferriage of all passengers, persons, property, and freight over said river, as is stipulated for by defendant. The plaintiff states that other persons than plaintiff have been permitted, without the consent and against the will of plaintiff, to do the ferriage of said persons, passengers, property, and freights over said river from the 13th day of August, 1872, to the commencement of this suit. The plaintiff says the defendant has not always employed it, as stipulated, to transport over said river said persons, passengers, property, and freights so coming from and going to said defendant's railroad to be transported thereon; but that others than plaintiff and than plaintiff's ferry have been so used and employed, and the plaintiff says it has not had the profits of transporting over said river opposite the city of St. Louis all passengers, persons, property and freights taken across said river either way by said railroad company; that the profits of said transportation have been, with consent of defendant, diverted from the plaintiff's ferry for the benefit of other persons than plaintiff, which other persons have been employed at St. Louis aforesaid, on the Illinois shore opposite said city of St. Louis, in the transportation over said river of such passengers, persons, property, and freights on every day since the thirteenth day of August, 1875, to the commencement of this suit, against the will of plaintiff, and contrary to said agreements of defendant. The plaintiff states that it has been deprived as mentioned above, by the conduct of defendant, on each day from the thirteenth day of August, 1875, down to the commencement of this suit of the ferriage of seven hundred & fifty passengers, and of the hundred & fifty railroad cars coming from and going to said defendant's ferriage of one railroad over said river, for transportation, and having been

transported on said railroad to said river opposite said city of St. Louis to cross said river, each of said railroad cars containing more than twenty thousand pounds of freight, & of the ferriage each day of 200 vehicles containing, on an average, 4,000 pounds each; that the plaintiff was deprived of the ferr'age of said passengers and railroad cars and freights in violation of said contract and agreement of the defendant with the plaintiff. The plaintiff states that it has been deprived, as mentioned above, by the conduct of defendant of the ferriage of other property and freights on each day as named above, namely, locomotives and empty cars, in violation of said defendant's contract, above set forth;
8 and the value to the plaintiff of all said ferriage has amounted to one thousand dollars on each day during the period above mentioned. The plaintiff says that the ferriage business of persons, property, and freights, coming from and going to defendant's railroad opposite the city of St. Louis, and over said river, has not been secured to plaintiff as stipulated for by defendant in said agreement; and that every stipulation and agreement in said articles contained, for securing to the plaintiff the ferriage business aforesaid over said river, has been broken by defendant, and these breaches of agreement have been made on every day from said 13th of August, 1875, to the commencement of this suit; that the said breaches and each of them was made by the defendant wilfully and in bad faith, and with intent to divert from plaintiff's ferry the passengers and freights aforesaid which defendant so agreed to secure to plaintiff for ferriage as above-mentioned; that after the execution and delivery of said articles of agreement of April 28, 1864, and the assignment thereof to defendant, and after the defendant had entered on the possession of said leased premises, the plaintiff repeatedly requested defendant to comply with said articles of agreement and secure to plaintiff the ferriage of passengers and freights stipulated for, but the defendant refused to comply with said articles; that on the eighth day of June, 1872, the plaintiff commenced a suit against the defendant in the circuit court of St. Louis County for breaches of said contract committed prior to that day in failing to pay to the plaintiff rents, as stipulated to be paid by defendant, and in refusing to secure to plaintiff the ferriage of said passengers and freights, persons and property mentioned in said articles; and the plaintiff's claim in that behalf was set forth substantially as in this petition, for breaches of said agreement prior to June 8, 1872, and the defendant, in answer to the plaintiff's petition in said suit of June 8, 1872, set forth that it never did contract and agree with plaintiff as set forth in plaintiff's petition, and did not become bound, and was not liable as set forth by plaintiff, and was not bound in said articles to furnish plaintiff either passengers, freights, or cars, as claimed by plaintiff, and averred that it had fully complied with and performed all its obligations and duties under said articles; that said Alton & St. Louis Railroad Company had no power to make said articles of April 28, 1864, and the same was made contrary to law and public policy, and was void; and that defendant was not lessee or covenantor in the place of the Alton & St. Louis Railroad Company. And in the said answer the defendant denied that plaintiff had performed, on its part, the said articles, or been ready or willing to do so, or had the means of doing so; and denied all breaches of said articles so alleged against it; and the plaintiff saith that issues were framed in respect to all

said matters of defence then and there set forth, and such proceedings were had in said suit so commenced June 8, 1872, that a verdict was found for the plaintiff on all said issues, and damages were assessed in favor of the plaintiff in that behalf as sustained by plaintiff on account of the breaches of said contract made by defendant prior to June 8, 1872, to the amount of one hundred and three thousand eight hundred and seventy-nine dollars and thirty-four cents; that judgment was rendered thereon in favor of the plaintiff, and said judgment remained in force till paid and satisfied by defendant, with costs, as will appear by a transcript of said suit herewith filed, and marked Exhibit No. 3.

And the plaintiff states that by means of the said several breaches of said articles of April 28, 1864, committed by the defendant from the thirteenth day of August, eighteen hundred and seventy-five, to the commencement of this suit, the plaintiff has sustained damages in the sum of five hundred thousand dollars, and for said amount of damages the plaintiff prays judgment, and the plaintiff prays judgment for interest upon the several amounts of money due to the plaintiff at the time of said breaches respectively, which amounts have been retained and used by defendant, to the great injury of the plaintiff, and for such other judgment as the plaintiff may be entitled to receive.

GLOVER & SHEPLEY,
Att'ys for Pl'ff.

9 Upon the filing of which petition a summons issued, which with the sheriff's return thereon is in words and figures following, to wit:

Summons.

CITY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of the city of St. Louis, greeting:

We command you to summon The Chicago and Alton Railroad Company to appear before the judges of our circuit court, on the first day of the next term thereof, to be held in the city of St. Louis on the first Monday of December next, then and there to answer the complaint of The Wiggins Ferry Company, as set forth in the annexed petition, and have you then and there this writ:

Witness, Charles F. Vogel, clerk of our said court, with the seal thereof hereto affixed at office in the city of St. Louis, this 19th day of Sept., in the year of our Lord eighteen hundred and eighty-one.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

Sheriff's return.

Executed this writ in the city of St. Louis, this 21st day of September, 1881, by delivering a copy of the writ and petition as furnished by the clerk to S. H. Knight, ticket agent of the Chicago and Alton Railroad Company, defendant herein, who was in defendants' general ticket
10 office and had charge thereof at the time of services. The president or other chief officer of said company could not be found in the city of St. Louis at the time of said service. Fee $1.

ISAAC M. MASON, *Sheriff.*
By JOHN Y. MIELERT, *Dep.*

And afterwards, at a special term of said circuit court, being the December term, 1881, of said court, the following proceedings were had in said cause, to wit:

50 days' time to plead.

TUESDAY, *December* 6, 1881.

THE WIGGINS FERRY COMPANY, *v.* THE CHICAGO & ALTON RAILROAD CO. } 57211.

On motion of defendant by attorney it is given fifty days' additional time in which to plead.

Answer filed.

WEDNESDAY, *January* 25, 1882.

THE WIGGINS FERRY COMPANY, *vs.* THE CHICAGO & ALTON RAILROAD CO. } 57211. Answer filed.

Which answer is in words and figures following, to wit:

Answer.

In the circuit court of the city of St. Louis, State of Missouri.

THE WIGGINS FERRY COMPANY, PLAINTIFF, *vs.* THE CHICAGO & ALTON RAILROAD COMPANY, defendant.

11 The Chicago and Alton Railroad Company, defendant, for answer to the petition filed in the above-entitled cause, says that it specifically denies all and every of the allegations in the said petition contained, excepting as it shall hereinafter specifically admit the same to be true.

This defendant, further answering, admits the execution of certain articles of agreement in writing, dated April 28, 1864, by and between the Wiggins Ferry Company and the Alton and St. Louis Railroad Company, mentioned in the complaint as No. 1 Exhibit, and this defendant says that the said agreement is the only one ever executed by or between said parties.

This defendant denies that either party to said agreement ever covenanted or agreed as in the complaint alleged or in any other manner than as in said written agreement set forth.

This defendant denies that plaintiff by said articles of agreement agreed to ferry or that the Alton and St. Louis Railroad Company agreed to employ plaintiff to ferry any engines or cars to or from any place whatsoever.

This defendant denies that plaintiff by agreement agreed to ferry any

persons or property excepting to and from its lawful landing-place, or that the Alton and St. Louis Railroad Company agreed to employ plaintiff to ferry any persons or property excepting to and from such places, or
12 that it would not employ others to ferry to and from other places; and defendant says that it never ferried nor employed others to ferry any persons or property between the lawful landing-places of the plaintiff.

Defendant further says that the lands mentioned in said articles of agreement were on Bloody Island, opposite to the city of St. Louis; that the then terminus of said railroad was on said Bloody Island, and that the depot grounds mentioned and referred to in said written agreement were by the parties intended to be and were on said Bloody Island, and not elsewhere, and that the ferry of plaintiff was then to and from said Bloody Island and not elsewhere, and its then eastern landing was on Bloody Island, and its business was carried on to and from said Bloody Island; and that by said articles of agreement, the persons, freight, and property embraced therein, or intended so to be, were such as should come on or go to said railroad on said Bloody Island, and to or from said lands, terminus, depot, and depot grounds, and to be crossed to or from the western shore of said island, and such as the Alton and St. Louis Railroad Company should ferry or transport or cause to be ferried or transported across said river in the way and by the mode of transportation then used and provided by the plaintiff; that the mode, and the only mode of trans-
13 portation across said river used, furnished, or provided by the plaintiff was its ferry-boats to receive packages, separate pieces or parcels of property which might be brought by cars of said railroad to the said landing of said boats, to be carried to the opposite or Missouri shore of said river or brought to its boats on the Missouri shore to be carried to the western shore of said island, and from thence to be taken upon the cars of said railroad in and upon said lands and depot grounds, and of persons who might come to or be so brought, and no other mode or means was then used, provided, known to, or contemplated by said parties in said articles, and that said articles of agreement do not require defendant not to transport, nor employ others so to do, persons or property in cars across said river over any bridge or over any other ferry whatever.

And this defendant, further answering, says that it was not allowed, but, on the contrary thereof, was forbidden by the laws of the State of Illinois from surrendering its power to transport persons and property to and from St. Louis, Missouri, or from employing others so to do, as the agencies and convenience of the public might require.

And this defendant, further answering, says that it was not al-
14 lowed, but, on the contrary thereof, was prohibited from entering into any contract by which it might undertake perpetually to employ any person or persons, and particularly the plaintiff, to transport persons and property to and from St. Louis, Missouri, to the exclusion of any other person or persons, company or companies, transporting persons or property between said places, or offering so to do.

And this defendant, further answering, says that, by the laws of the State of Illinois, it was required to make arrangements, as the public exigencies and convenience might require, to transport persons and property across the Mississippi River with all companies or persons authorized by

the legislature of that State to perform such services, and at any and all places where such exigencies and conveniences might require; and particularly, by the laws of the State of Illinois, it was and is provided that railroads terminating at, or to terminate at, any point on any line of continuous railroad thoroughfare where there now is or shall be a railroad bridge for the crossing of passengers and freight in cars over the same, as a part of such thoroughfare, shall make convenient connections with such railroad by rail with the rail of such bridge, and such bridge shall
15 permit and cause such connections with the rail of such railroads, so that by reason of such railroad and bridge there shall be uninterrupted communication over such railroad and bridge as public thoroughfares.

And this defendant says that neither the plaintiff, The Alton and St. Louis Railroad Company, nor this defendant had any right whatever to enter into any contract contravening the laws of the State of Illinois in the respects hereinbefore mentioned, and that said articles of agreement properly construed do not contravene such laws or any of them.

Defendant admits that the annual rent of $2,500 per year since August 13th, 1875, is unpaid, but defendant at all times, as each quarterly payment under said articles of agreement was payable, was ready and willing and offered to pay the same, but plaintiff notified defendant that it would not receive the same nor any instalments thereof, and defendant now offers to bring here into court the full amount thereof, and to pay the same.

Defendant asks to be discharged and to receive its costs herein, etc.

THE CHICAGO AND ALTON RAILROAD COMPANY,
By C. BECKWITH, *its Att'y.*
J. M. & C. H. KRUM.

16 And afterwards, to wit, on the 30th day of January, 1882, a reply to said answer was filed in said cause, which is in words and figures following, to wit:

Reply.

In the circuit court, city of St. Louis, court-room No. 4.

WIGGINS FERRY COMPANY
vs.
CHICAGO AND ALTON RAILROAD COMPANY. } No. 57211.

And now comes the said plaintiff, The Wiggins Ferry Company, and for reply to the new matter set up in defendant's answer says that the allegation and statements in said defendant's answer contained, of new matter, are not, nor is either of them, true.

GLOVER & SHEPLEY,
Att'ys for Plaintiffs.

And again, at said December term, 1881, of said circuit court, the following further proceedings were had in said cause, to wit:

Order of removal.

SATURDAY, *February* 4, 1882.

THE WIGGINS FERRY COMPANY
v.
THE CHICAGO & ALTON RAILROAD COMPANY. } 57211.

On petition and affidavits of defendant, by attorney this day filed, it is ordered by the court that on the defendant giving bond in the sum
17 of five hundred dollars, with security to be approved by the court, that the clerk of this court forthwith certify to the circuit court of the United States for the eastern district of Missouri a full, true, and complete transcript of the record and proceedings in this cause as fully as the same remains of record in his office. Bond filed and approved.

Which petition and affidavits, exhibits, and bond for removal are respectively in words and figures as follows, to wit:

Petition for removal.

In the circuit court of the city of St. Louis.

THE WIGGINS FERRY COMPANY, PLAINTIFF,
vs.
THE CHICAGO AND ALTON RAILROAD COMPANY,
defendant. } No. 57211.

To the hon. circuit court of the city of St. Louis:

Your petitioner, The Chicago and Alton Railroad Company, the defendant in the above-entitled cause, represents that the matter and amount in dispute in said cause exceeds, exclusive of costs, the sum or value of five hundred dollars.

Your petitioner further represents that said suit is one arising
18 under the Constitution and laws of the United States, in manner following, that is to say, that your petitioner is a corporation created by and organized under certain public acts of the general assembly of the State of Illinois, granting to your petitioner the right to acquire or construct and maintain and operate certain railroads in said State, with other powers, as will more fully appear by copies of said public acts, severally authenticated by having the seal of the State of Illinois affixed thereto, and which are hereunto annexed and made a part hereof as fully as if the same were herein set forth at length.

Your petitioner further represents that in and by said public acts of the State of Illinois your petitioner was, among other things, authorized to acquire or construct and maintain and operate a continuous line of railroad from the city of Chicago, in the State of Illinois, to a point in said State opposite the city of St. Louis, in the State of Missouri, and was by necessary implication and expressly authorized "to take, use, and make arrangements for the transportation of freight and passengers carried, or to be carried, upon said railroad, or otherwise, from Alton to St. Louis,
19 Missouri, and for this purpose to construct, own, and use such boat or boats as might be necessary."

Your petitioner further represents that the Alton and St. Louis Railroad Company, in the plaintiff's petition mentioned, was and is a a corporation created by and organized under a public act of the general assembly of the State of Illinois, granting to said corporation the right to acquire or construct, maintain, and operate a certain railroad in the State of Illinois, and other powers, a copy of which act, authenticated by having the seal of the State of Illinois, is affixed thereto and made a part hereof, as fully as if the same were herein set forth at length.

Your petitioner further represents that by said last-mentioned public act the said Alton and St. Louis Railroad Company was by necessary implication authorized to transport persons and property across the Mississippi River to and from St. Louis, Mo., and to employ others so to do as the public exigencies or convenience might require.

Your petitioner further represents that the Joliet and Chicago Railroad Company, in the plaintiff's petition mentioned, was a corporation created by and organized under a public act of the general
20 assembly of the State of Illinois, granting to said corporation the right to construct maintain, and operate a railroad from Joliet, in said State, to Chicago, in said State, and with other powers, a copy of which act, and an act amendatory thereof, are hereunto annexed and made a part hereof as fully as if the same were herein set forth at length.

Your petitioner further represents that prior to the 28th day of April, A. D. 1864, it had, under the several acts aforesaid, constructed and acquired a continuous line of railroad from Chicago, in the State of Illinois, to the western shore of Bloody Island, in said State, and was then, and ever since has been, and still is, maintaining and operating the same for the transportation of persons and property as the public exigencies and convenience require.

Your petitioner further represents that neither of the aforesaid corporations were by said public acts or any of them, or by any law of the State of Illinois, authorized to enter into any contract or stipulation to refrain from exercising their several powers, or any of them, to transport persons and property across the Mississippi River to or from St. Louis, Mo., or to employ others so to do in any manner whatever in the judgment of said corporations, respectively, the exigencies or convenience of the
21 public might require, and on the contrary thereof were by the laws of the State of Illinois precluded from so doing.

Your petitioner further represents that prior to the 26th day of April, 1864, the Madison County Ferry Company was, and ever since has been, and still is, a corporation created by and organized under laws of the State of Illinois, granting to said last-mentioned corporation the right to maintain and operate a ferry for the transportation of persons and property across the Mississippi River between the western shore of the State of Illinois, near Venice, in said State and the eastern shore of Missouri, at St. Louis, as will more fully appear by a copy of said acts duly authenticated by having the seal of the State of Illinois affixed thereto, and hereunto annexed and made a part hereof, and that prior to the said 28th day of April, 1864, the said Madison County Ferry Company was, and ever since has been, and still is, engaged in the business of transporting persons and property across said river between said places as the public exigencies and convenience may require; and that prior to the 1st day of January, 1869, the defend-

ant had, and ever since has had, and still has, a station at said
22 Venice, the eastern terminus of said ferry, for the accommodation of the public, and to enable persons and property carried or to be carried on said railroad to be crossed over said river at said place and by said ferry.

Your petitioner further represents that prior 28th day of April, 1864, the Wiggins Ferry Company was, and ever since has been, and still is, a corporation created by and organized under a public act of the general assembly of the State of Illinois, granting unto said last-mentioned corporation power and authority to maintain and operate a ferry or ferries for the transportation of persons and property across the Mississippi River between the western shore of Bloody Island, in the State of Illinois, and the eastern shore of Missouri, at St. Louis, as will more fully appear by a copy of said act, duly authenticated by having the seal of the State of Illinois affixed thereto, and which is hereunto annexed and made a part hereof, as fully as if the same were herein set forth at length; and that prior to the 28th day of April, 1864, the said Wiggins Ferry Company was, and ever since has been, and still is, engaged in the business of transporting persons and property across said river between said places.

23 Your petitioner further represents that neither of said last-named ferry companies had any power or authority to enter into any contract or stipulation with your petitioner requiring it to refrain from exercising its power to transport persons and property over said river, between said places, or to refrain from employing either of said companies, or any other person or company lawfully engaged in said business, so to do, and on the contrary thereof were by the laws of the State of Illinois precluded from entering into any such contract or stipulation.

Your petitioner further represents that on the 28th day of April, 1864, the said Wiggins Ferry Company and the Alton and St. Louis Railroad Company made and entered into the agreement of that date for alleged breach of which this suit is brought, and which is in plaintiff's petition*ed* as Exhibit No. 1, a copy whereof is hereunto annexed and made a part hereof, as fully as if the same were herein set forth at length.

Your petitioner further represents that afterwards, to wit, on the 28th day of April, 1864, the said Alton and St. Louis Railroad Company, by its deed of that date, sold, assigned, and transferred unto your petitioner the said written agreement last-mentioned, and all the right, title,
24 and interest in and to the lands, tenements, and easements therein described, as by a copy of said deed of assignment, hereunto annexed and made a part hereof, will more fully appear.

Your petitioner further represents that on the 28th day of April, 1864, your petitioner entered into possession of the premises described in said agreement of that date so assigned to your petitioner as aforesaid, and hath ever since remained and still remains in possession of the same.

Your petitioner further represents that by a public act of the general assembly of the State of Illinois, approved February 25th, 1867, entitled "An act to facilitate travel and transportation," it was provided "that railroads terminating or to terminate at any point on any line of continuous railroad thoroughfare where there now is or shall be a railroad bridge for crossing of passengers and freight in cars over the same, as part of such thorough-

fare, shall make convenient connections of such railroads, by rail, with the rail of such bridge; and such bridge shall permit and cause such connections of the rail of the same with the rail of such railroads, so that, by reason of such railroads and bridge, there shall be uninterrupted com-
25 munication over such railroads and bridge as public thoroughfares; and that by such connections no corporate rights shall be impaired," as by a copy of said act, duly authenticated by having the seal of the State of Illinois affixed thereto, hereunto annexed and made a part hereof will more fully appear.

Your petitioner further represents that heretofore, to wit, on the 21st day of February, 1867, the Illinois and St. Louis Bridge Company was created by and organized under laws of the States of Illinois and Missouri, granting to said corporation power to construct, maintain, and operate a bridge across the Mississippi River from St. Louis, Missouri, to a point on the western bank of said Bloody Island, in the State of Illinois, and to make all necessary, convenient, and proper approaches thereto on either side of said river; and that on or about the 4th day of July, 1874, under and by virtue of said authority, said corporation constructed such bridge, with the said necessary, proper, and convenient approaches thereto, and that said bridge and approaches, ever since said time last aforesaid, have been maintained and used, and that the eastern approach to said bridge and terminus thereof is near and in the immediate vicinity of the south-
26 ern terminus of the railroad of your petitioner, on said Bloody Island, in the State of Illinois; that the said bridge referred to is a railroad bridge for crossing of passengers and freight in cars over the same, and that said crossing is and was designed to be part of a continuous railroad thoroughfare between points east and west of said Mississippi River, and said crossing is the safest, most expeditious, and economical method and means of crossing said river with freight and passengers; that the rails of the railroad of your petitioner have been and are now duly connected with those of said railroad bridge, and that notwithstanding the foregoing provisions of the law and said chartered rights and privileges, and notwithstanding the public duty imposed upon your petitioner as a carrier of freight and passengers, to provide and afford the most expeditious safe, and economical methods and means of transportation for the purposes of its business, and the safety, welfare, and comfort of passengers and property committed to its care and keeping, said plaintiff claims that the contract sued upon imposes upon your petitioner the perpetual obligation to employ and use for the transportation and carriage across said river Mississippi, from said Bloody Island to St. Louis, and vice versa, of
27 both freight and passengers, only the boats, vessels, and means of transportation belonging to and operated by said plaintiff, and that by reason of the judgment hereinafter set forth the defendant is estopped to inquire into or dispute the validity of such claim.

Your petitioner further represents that said agreement of April 28, 1864, and the assignment thereof to your petitioner are, so far as they undertake or purport to impose an obligation upon your petitioner to always employ the plaintiff to transport across the Mississippi River all persons and property which may be taken across the same, either way, to or from the Illinois shore, either for the purpose of being

transported on said railroad or having been brought to the said river Mississippi upon said railroad, so that plaintiff should have the profits of the transportation of all such passengers, persons, and property taken across said river, either way, by said railroad company, or that no other than the plaintiff should ever at any time be employed by your petitioner to cross any passengers or freight coming or going on said road, are by the public acts and laws of the State of Illinois utterly void and of no effect whatever, and that an observance of any such contract or agreement would be a violation of the said public acts and laws of said
28 State. Nevertheless, the said plaintiff claims in its said petition that heretofore, to wit, on the 8th day of June, 1872, it commenced a suit in the circuit court of the city of St. Louis, Mo., against your petitioner, for alleged breaches of said agreement, and that by reason of the adjudication in said suit in said petition mentioned and set forth your petitioner is precluded and estopped from insisting that any such supposed obligation or undertaking on the part of your petitioner would have been in contravention of the laws of the State of Illinois and utterly void and of no effect.

Your petitioner further represents that full faith and credit has not been given to the public acts of the State of Illinois by the supreme court of the State of Missouri in the adjudication aforesaid, and that by reason of the facts herein set forth and of such adjudication and of the pleading thereof as an estoppel in the manner set forth in plaintiff"s petition this suit is one arising under the Constitution and laws of the United States.

And your petitioner offers herewith a bond with good and sufficient surety for its entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said
29 court shall hold that this suit was wrongfully or improperly removed hereto.

And your petitioner prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the eastern district of Missouri, and it will ever pray.

[OFFICIAL SEAL.] THE CHICAGO & ALTON RAILROAD COMPANY,
By C. BECKWITH,
Its General Solicitor.
J. M. & C. H. KRUM,
Attorneys.

Attest:
C. H. FOSTER, *Secretary.*

STATE OF ILLINOIS,
Cook County, ss:

I, Corydon Beckwith, being duly sworn, do say that I am the general solicitor of the said Chicago and Alton Railroad Company, petitioner in the above-entitled cause; that I have sole charge and management of the legal business of said company, and have full power and authority
30 to sign the foregoing petition and file the same; that I have read

the same, and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

CORYDON BECKWITH.

Subscribed by the said Corydon Beckwith in my presence, and by him sworn to before me, this the 1st day of February, A. D. 1882.

[NOTARIAL SEAL.] WM. COLEBROOKE,
Notary Public.

(Commission expires May 28th, 1882.)

31 57211.] EXHIBITS.

Act to construct railroad from Alton to Springfield, &c.

Originated in the House of Reps.

JNO. McDONALD, *Cl'k H. R.*

An act to construct a railroad from Alton, in Madison County, to Springfield, in Sangamon County.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that Robert Ferguson, Simeon Ryder, Benjamin Godfrey, Thomas Clifford, Robert Dunlap, and William Martin, and their associates, successors, and assigns, are hereby created a body corporate and politic, under the name and style of The Alton and Sangamon Railroad Company, for the term of thirty years, and by that name be, and they are hereby, made capable in law and in equity to sue and be sued, plead and be impleaded, defend and be defended, in any court of law and equity in this State, or in any other place; to make, have, and use a common seal, and the same to renew and alter at pleasure; and shall be, and are hereby, vested with all the powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth; and the said company are hereby authorized and empowered to locate, construct, and finally complete a railroad from the city of Alton, on the Mississippi River, in Madison County, by the way of Carlinville, in Macoupin County, New Berlin, in Sangamon County, to the city of Springfield, in the county of Sangamon; and for this purpose said company are authorized, upon the most eligible and proper route, to lay out their said railroad wide enough for a single or double track through the whole length, and for the purpose of cutting embankments, stone and gravel, may take as much more land as may be necessary for the proper construction of and security of said railroad.

SEC. 2. The capital stock of said company shall consist of five hundred thousand dollars, and may be increased to one million of dollars, to be divided into shares of one hundred dollars each. The immediate government and direction of said company shall be vested in five directors, who shall be chosen by the stockholders of said company in the manner hereinafter provided, who shall hold their offices for one year after their election and until others shall be duly elected and qualified to take their places as directors, and the said directors (a majority of whom shall form a quorum for the transaction of business) shall elect one

of their number to be the president of the company; that said board of directors shall have power to appoint all necessary clerks, secretary, and other officers necessary in the transaction of the business of said corporation.

SEC. 3. The said corporation is hereby authorized, by their agents, surveyors, and engineers, to cause such examination and surveys to be made of the ground and country between said city of Alton and Springfield as shall be necessary to determine the most advantageous route for the proper line or course whereon to construct their said railroad, and it shall be lawful for said company to enter upon and take possession of and use all such lands and real estate as may be necessary for the construction and maintenance of their said railroad; provided, that all lands or real estate entered upon and taken possession of and used by said corporation for the purposes and accommodations of said railroad, or upon which the site for said railroad shall have been located or determined by the said corporation, shall be paid for by said company in damages, if any be sustained by the owner or owners thereof by the use of the same for the purpose of said railroad, and all lands entered upon and taken for the use of said corporation which are not donated to said company shall be paid for by said corporation at such price as may be mutually agreed upon by the said corporation and the owner or owners of such land, and, in case of disagreement, the price shall be estimated, fixed, and recovered in the manner provided for taking lands for the construction of public roads, canals, or other public works, as prescribed by the act concerning right of way approved March 3, 1845.

32 SEC. 4. If any person shall wilfully, maliciously, or wantonly, and contrary to law, obstruct the passage of any car on said railroad, or any part thereof, or anything belonging thereto, or shall damage, break, or destroy any part of the said railroad, or implements, or buildings, he, she, or they, or any person assisting, shall forfeit and pay to said company for every such offense treble the amount of damages that shall be proved before any competent court has been sustained and be sued for in the name and behalf of said company, and such offender or offenders shall be deemed guilty of a misdemeanor, and shall be liable to an indictment in the same manner as other indictments are found in any county or counties where such offense shall have been committed, and upon conviction, every such offender shall be liable to a fine not exceeding five thousand dollars, for the use of the county where such indictments may be found.

SEC. 5. The time of holding the annual meeting of said company for the election of directors shall be fixed and determined by the by-laws of said company; and at all meetings each stockholder shall be entitled to a vote in person or lawful proxy; one vote for each share of stock he, she, or they may hold bona fide in said company.

SEC. 6. The persons named in the first section of this act are hereby appointed commissioners, who, or a majority of whom, are hereby authorized to open subscription books for said stock at such places as they may deem proper, and shall give at least thirty days' notice of the time and place when and where such books will be opened in some newspaper printed in the city of Springfield, Alton, and Saint Louis, and shall keep said books open until the whole of said capital stock shall be taken. Said commissioners shall require each subscriber to pay five dollars on each

share subscribed at the time of subscribing. The said commissioners shall call a meeting of the stockholders, by giving thirty days' notice in some newspaper printed in the county of Madison, and at such meeting it shall be lawful to elect the directors of said company, and when the directors of said company are chosen, the said commissioners shall deliver said subscription books, with all sums of money received by them as commissioners, to said directors. No person shall be a director in said company unless he shall own at least ten shares of the capital stock.

SEC. 7. That the right of way and the real estate purchased for the right of way by said company, whether by mutual agreement or otherwise, or which shall become the property of the company by operation of law, as in this act provided, shall, upon the payment of the amount of money belonging to the owner or owners of said lands as a compensation for the same, become the property of said company in fee-simple.

SEC. 8. The said corporation may take and transport upon said railroad any person or persons, merchandise, or other property, by the force and power of steam or animals, or any combination of them, and may fix, establish, take, and receive such rates of toll for all passengers and property transported upon the same as the said directors shall, from time to time, establish; and the directors are hereby authorized and empowered to make all necessary rules, by-laws, regulations, and ordinances that they may deem necessary and expedient to accomplish the designs and purposes and to carry into effect the provisions of this act, and for the transfer and assignment of its stock, which is hereby declared personal property and transferable in such manner as shall be provided by the by-laws and ordinances of said corporation.

SEC. 9. The directors of said company, after the same is organized, shall have power to open books in the manner prescribed in the sixth section of this act, to fill up the additional five hundred thousand dollars of stock, or any part thereof, at such times as they may deem it for the interest of said company; and all the instalments required to be paid on the stock originally to be taken, and what may be taken to increase said capital, shall be paid at such times and in such sums as said directors may prescribe.

SEC. 10. In case of the death, resignation, or removal of the president, vice-president, or any director, at any time between the annual elections, such vacancy may be filled for the remainder of the year, whenever they may happen, by the board of directors; and in case of absence of the president and vice-president, the board of directors shall have power to appoint a president pro tempore, who shall have and exercise
33 such powers and functions as the by-laws of the said corporation may provide. In case it should at any time happen that an election shall not be made on any day on which, in pursuance of this act, it ought to be made, the said corporation shall not, for that cause, be deemed dissolved, but such election shall be held at any other time directed by the by-laws of said corporation.

SEC. 11. That when the lands of any femmes covert, persons under age, non compos mentis, or out of this State, shall be taken in the construction of said railroad, as is provided by this act, the said corporation shall pay the amount that shall be awarded as due to the said last-mentioned owners, respectively, whenever the same shall be lawfully demanded, together

with six per cent. per annum; that to ascertain the amount to be paid to the persons named in this section for lands taken for the use of said corporation, it shall be the duty of the governor of this State, upon notice given to him by the said corporation, to appoint three commissioners, to be persons not interested in the matter to be determined by them, to determine the damages which the owner or owners of the land or real estate, so entered upon by the said corporation, has or have sustained by the occupation of the same; and it shall be the duty of said commissioners, or a majority of them, to deliver to said corporation a written statement of the award or awards they shall make, with a description of the land or real estate appraised, to be recorded by the said corporation in the clerk's office of the county in which the land or real estate so appraised shall be, and then the said corporation shall be deemed to be seized and possessed of the fee-simple of all such lands or real estate as shall have been approved by the said commissioners.

SEC. 12. That whenever it shall be necessary for the construction of said railroad to intersect or cross any water course or any road or highway lying between the points aforesaid, it shall be lawful for the corporation to construct their railroad across or upon the same; provided, that the corporation shall restore the water course or road or highway thus intersected to its former state, or in a sufficient manner not to have impaired its usefulness.

SEC. 13. That the capital stock of said company may be increased from five hundred thousand dollars to one million of dollars, from time to time, by new subscriptions, if such increase shall be found necessary to fulfill the intention of this act, upon the directors for the time being giving the notice as herein required, previous to opening the subscription books for the original stock herein, and that all stock of said corporation shall be deemed personal property, and transferable in such manner as the said corporation shall by its by-laws prescribe.

SEC. 14. That it shall be lawful for the directors to require payment of the sums subscribed to the capital stock at such times and in such proportions and on such conditions as they shall deem fit, under the penalty of the forfeiture of all previous payments thereon, and shall give notice of the payments thus required, and of the place and time when and where the same are to be paid, at least ninety days previous to the payment of the same, in some public newspaper of this State, published in some one of the cities where the notice for the opening the books of subscription to the capital stock may have been published.

SEC. 15. The width of said railroad is to be determined by the said corporation, within the limits prescribed by the first section of this act.

SEC. 16. That said corporation shall be, and they are hereby, authorized, if they should deem it proper, to take and appropriate in the construction of said railroad the work and materials, or so much of the western division of the Alton and Mt. Carmel Railroad as extends from the public landing in the city of Alton to the junction of said railroad with the Alton and Shelbyville Railroad, and so much of the work and labor as has been done by the State upon the said Alton and Shelbyville Railroad as extends from the junction aforesaid toward its contemplated intersection with the Central Railroad, so far as they may deem proper, and also to use the right of way now owned by the State on the lines of the said Alton

and Mt. Carmel and the Alton and Shelbyville Railroads so far as said company may deem it advisable to use said right of way; that if said right of way and said labor and materials shall be used by said corporation, the same shall be valued by two persons, one to be selected by the governor and the other by the said corporation, and the price thereof paid to the State in State indebtedness. Upon said payment being made in State indebtedness, the said right of way and the said work and labor shall be vested in said corporation as fully and completely as said right of way and said work and labor is now vested in the State.

34 SEC. 17. The said corporation may also connect the said railroad contemplated by this charter with the Northern Cross Railroad, at New Berlin, in Sangamon County, and to use so much of said Cross Railroad, between Jacksonville and Springfield, as they shall deem necessary, said corporation paying to the State, or any company that may purchase said Cross Railroad, such sum for the use of said Cross Railroad as may be used, such sum as the parties in interest, for the time being, may agree upon; the corporation and the said company who may purchase said Cross Railroad paying a proportional amount for repairs on said Cross Railroad, and in case of disagreement as to the price to be paid by this company for the use of said Cross Railroad, or for the repairs thereon, the judge of the circuit court of Sangamon County, sitting as chancellor, shall decide upon the amount to be paid, on petition to be filed by either party in interest, which petition shall be proceeded in according to the rules and practice that govern chancery proceedings.

SEC. 18. That in using the west end of said Alton and Mt. Carmel Railroad by this corporation, it shall not be so used by said corporation as to deprive the proprietors of the Alton and Mount Carmel Railroad, in the event of the State relinquishing said Alton and Mount Carmel Railroad to the original company, from the free use thereof, by paying to this corporation such sum therefor as may be agreed upon; and in case of disagreement as to price, the matter shall be referred to the judge of the Madison circuit court in the same manner as is provided for referring a similar matter to the judge of the Sangamon circuit court, as provided for in section seventeen of this act.

SEC. 19. That the State of Illinois, when it may hereafter wish to use any part of the State works that may be appropriated to this corporation by this act, it may do so by allowing said corporation a fair compensation for the use of said public works, and in case of disagreement the matter shall be referred to the judge of the Sangamon circuit court, to be proceeded in the same manner as provided in section seventeen of this act.

SEC. 20. This act shall be in force for the period of forty years, and said company shall commence said work within three years and complete the same within ten years from the passage of this act.

NEWTON CLOUD,
Speaker of the House of Representatives.
JOSEPH B. WELLS,
Speaker of the Senate.

Approved Feb'y 27, 1847.

AUG. C. FRENCH.

Act to extend Alton & Sangamon R. R. Co.

Originated in the senate.

JAMES H. HARDY, *Sec. pro tem.*

An act entitled an act to extend the Alton and Sangamon Railroad Company, incorporated February 27, 1847.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the Alton and Sangamon Railroad Company, incorporated by an act entitled "An act to construct a railroad from Alton, in Madison County, to Springfield, in Sangamon County," approved February 27, 1847, be, and are hereby, authorized to extend their said railroad, and to construct an extension of the same from Springfield, in Sangamon County (upon the most eligible route), to Bloomington, in McLean County, and for the purposes of such extension said Alton and Sangamon Railroad Company shall be, and are hereby, declared to possess all the powers, and be subject to all the restrictions, contained in the original act of incorporation and the acts amendatory of the same.

SEC. 2. The said Alton and Sangamon Railroad Company, for the purposes of carrying into effect the provisions of the foregoing section, shall have power to increase their capital stock not exceeding one million of dollars.

SEC. 3. Unless said extension shall be commenced within two years, and completed within six years from the passage of this act, the benefits and provisions of this amendatory act shall be forfeited.

SIDNEY BREESE,
Speaker of the House of Rep's.
WILLIAM McMURTRY,
Speaker of the Senate.

Approved Feb'y 11, 1851.

AUG. C. FRENCH.

35 *An act to change name, &', of Alton & Sangamon R. R. Co.*

An act to change the name and further amend the charter of the Alton and Sangamon Railroad Company. Approved June 19, 1852.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the Alton and Sangamon Railroad Company, incorporated by an act entitled "An act to construct a railroad from Alton, in Madison County, to Springfield, in Sangamon County," approved February 29, 1847, be, and hereby are, authorized to extend their said railroad from the termination of the extension of the said Alton and Sangamon Railroad from Springfield to Bloomington, in McLean County, from Bloomington upon the most eligible route, to connect with the Chicago and Rock Island Railroad at a point upon said Chicago and Rock Island Railroad not west of Ottawa, in La Salle County, nor east of Joliet in Will County; and for the purpose of such extension said Alton and Sangamon Railroad Company shall be and are hereby declared to possess all the powers and be subject to all the restrictions contained in the original act of incorporation and acts amendatory of the same. The

said company shall have the option to extend their said railroad from said town of Bloomington to the city of Chicago, by way of Joliet, in Will County, upon the most direct and practicable route, if said company shall so desire; but if said company construct said railroad to Chicago it shall not connect with any railroad running east to the State of Indiana, north of Ottawa, until after said road shall touch the limits of said city of Chicago. Said company are hereby expressly prohibited from connecting with any road running east out of this State, or any branch running east out of the State, from any point north of Ottawa, except and only through Chicago, and all right to any such eastward connection or branch leading east from any point north of Ottawa, except through Chicago, is withheld from and expressly denied to said company; provided, however, the prohibition above named shall not prevent said company crossing any railroad between Bloomington and Chicago.

SEC. 2. The name of said company is hereby changed and declared henceforth to be the Chicago and Mississippi Railroad Company, and by and under that name said corporation shall be henceforth known and have its corporate existence, and hold and be possessed of all the rights, powers, and privileges granted to the Alton and Sangamon Railroad Company in the original charter of said company, as also under the amendments made to said charter, and shall be and become vested with all the the property and estate of every kind whatsoever vested in the name of said Alton and Sangamon Railroad Company, and become liable to all the restrictions, contracts, and obligations made or incurred in their original name; and all suits now pending, or liabilities accrued, or agreements made in said original name shall proceed or continue to be enforced without any delay on account of said alteration, upon the suggestion of the change of name being entered of record in any court where any such agreements, liability, or right may be now pending or hereafter sought to be enforced. The capital stock of said company may be increased to such sum of money as may be deemed necessary to construct, furnish, and maintain said extension; provided, however, that the entire capital stock of said company shall not exceed three millions five hundred thousand dollars; and said company shall have authority to increase the number of their directors, not exceeding four, in addition to those already provided for.

SEC. 3. It shall be lawful for the said company to unite with any other railroad company which may have been, or may hereafter be, incorporated by this State, and to grant to any such company the right to construct and use any portion of the road authorized to be constructed by any of the amendments of the original charter of the Alton and Sangamon Railroad Company, thereto made, or to be made, upon such terms as may be mutually agreed between the said companies; and the said Chicago and Mississippi Railroad Company shall have power to take, use, and make arrangements for the transportation of freight and passengers carried or to be carried upon said railroad, or otherwise, from Alton to St. Louis, Missouri, and for this purpose to construct, own, and use such boat or boats as may be necessary.

SEC. 4. That previous to any application being made to the governor for the appointment of commissioners, as provided in the eleventh section
36 of the original charter to which this is an amendment, it shall be the

duty of the commissioner to give notice to those interested in the land over which the said railroad company desires to obtain the right of way, which notice shall be in writing, specifying the time when such application is to be made to the governor, and shall be served upon the owners and those interested in said land by the commissioners of said company, or by any sheriff or constable of the county in which said persons reside, in the same way as service of process in chancery; provided, said owners or those interested are residents of the State of Illinois or in case said owners or those interested shall be non-residents of the State of Illinois, then such notice may be given by publication in a newspaper published in the county where said lands lie, or in case there in no newspaper published in the county, then in the nearest newspaper published in this State. Said publication shall contain the names of the parties interested in said lands, the description of the land, and the time when application is to be made to the governor for the appointment of commissioners, as aforesaid, and shall be made for four successive weeks, the first of which shall be at least thirty days before such application is to be made.

SEC. 5. That copies of all papers, books, or proceedings whatsoever, or parts thereof, appertaining to the transactions of said railroad company, or to the proceedings heretofore had in connection with the organization of the original company by the commissioners, or since had by said railroad company, certified to be true copies by the clerk or keeper of the same, under the seal of said corporation, the said clerk or keeper also certifying that he is entrusted with the safe-keeping of the originals of which he gives certified copies, shall be received as prima-facie evidence of the facts so certified, in all the courts of this State, in any suit or proceedings pending before them, without any proof of the identity of said clerk or keeper of the original papers, books, or proceedings, as aforesaid.

SEC. 6. For the purpose of facilitating the construction of the railroad authorized by this act, the said corporation is and shall be permitted to negotiate a loan or loans of money to the amount of its capital stock, and to pledge all of its property, real and personal, and all of its rights, credits, and franchises for the payment thereof.

SIDNEY BREESE,
Speaker of the House of Rep's.
WILLIAM McMURTRY,
Speaker of the Senate.

Approved, June 19, 1852.

AUG. C. FRENCH.

Act to amend charter of Chicago & Mississippi R. R. Co.

Originated in the senate.

R. E. GOODELL, *Sec'y.*

An act further to amend the charter of the Chicago and Mississippi Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the Chicago and Mississippi Railroad Company is hereby empowered to borrow money, not exceeding in

amount its capital stock as authorized by law, for the purpose of completing its railroad and for laying down a double track on the whole or a part thereof, and for completing its buildings, fixtures, and machinery, and supplying equipments for the road, or for paying any debts or liabilities heretofore incurred or hereafter to be incurred by said company in the construction, completion, or equipment of its road, or laying down a double track thereon, or otherwise incurred or to be incurred; and for the purpose of borrowing such money said company may issue its corporate bonds or obligations, payable to order or bearer, on time, at any place within or without this State, bearing an interest not exceeding ten per cent. per annum, payable annually or semi-annually, and with or without authority therein to the holders respectively, at any time or times therein to be specified, to convert such bonds or obligations into the capital stock of said company at par; and said company is hereby authorized to secure the payment of such bonds or obligations, or any part thereof, by one or more mortgages upon the property, real and personal, rights, credits, and franchises of said company, and to sell, dispose of, or negotiate such bonds or obligations, either within or without this State, at such rates, for such prices, and on such terms as said company may determine, and all such sales or other negotiations of such bonds or obligations, or any of them, for a less amount than their par or nominal value, shall be as legal, valid, and effectual and as binding upon said company as if they had been sold or otherwise negotiated at their full par or nominal value.

37 SEC. 2. The said company is hereby further authorized, for any of the purposes specified in the first section of this act, to create and issue shares of guaranteed stock, to be denominated "preferred stock," which, together with the other stock of the company, shall not exceed the amount of capital stock authorized by law, and which preferred stock shall be entitled to such rates of dividend or of interest, not exceeding ten per cent. per annum, payable out of the net earnings of said road, and to such preference or priority in the payment of dividends or of interest, not exceeding the rate aforesaid, out of the net earnings over the original or other stock of said company as the board of directors shall determine and prescribe, and as shall be approved by a majority in interest of the owners of the original or other stock of the company represented at any annual meeting, or by the written consent of the owners of a majority in interest of such stock filed in the office of the company, and all such guarantees and any contracts in respect to the dividends or interest to be paid upon such "preferred stock," not exceeding the rate aforesaid, shall be legal and binding upon said company; provided, however, that this act and nothing therein contained shall be so construed as to impair or affect the validity of any corporate bonds or obligations heretofore issued by said company, or the validity or lien of any mortgage or mortgages heretofore made or executed by said company to secure the payment of such bonds or obligations; nor shall this act nor anything therein contained be so construed as to allow or permit said company to issue or have outstanding at any time its corporate bonds or obligations exceeding in amount the capital stockof said company as authorized by law.

SEC. 3. This act shall take effect and be in force from and after its passage.

JOHN REYNOLDS,
Speaker of the House of Rep's.
G. KOERNER,
Speaker of the Senate.

Approved Feb'y 28, 1854.

J. A. MATTISON.

Act to change name, &c., of Chicago & Alton R. R. Co., &c.

Originated in the house.

E. L. BRIDGES, *Clerk.*

An act to change the name and to amend the charter of the Chicago and Mississippi Railroad Company, and to authorize said company and the Belleville and Illinoistown Railroad Company and the Terre Haute and Alton Railroad Company to make contracts and running arrangements with each other, or to lease or buy the road of the said Belleville and Illinoistown Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the name of said Chicago and Mississippi Railroad Company be, and is hereby, changed and declared henceforth to be "The Chicago, Alton and St. Louis Railroad Company," and by and under that name said corporation shall be henceforth known and have its corporate existence, and hold and be possessed of all the rights, powers, and privileges granted to the Alton and Sangamon Railroad Company in the original charter of said company, as also under all the amendments made to said charter, and shall be and become vested with all the property and estate of every kind whatever vested in the name of the Alton and Sangamon Railroad Company, or in the name of the Chicago and Mississippi Railroad Company, and become liable to all restrictions, contracts, bonds, mortgages, and obligations made or incurred in their original name, or in the name of the Chicago and Mississippi Railroad Company, and all suits now pending or liabilities incurred, or agreements made in said original name, or in the name of the Chicago and Mississippi Railroad Company, shall proceed and continue to be enforced without any delay on account of said alteration, upon the suggestion of the change of name being entered of record in any court where any such suits, agreements, liabilities, or rights may be pending or hereafter sought to be enforced.

SEC. 2. The said company shall have power and are hereby authorized to extend their road from its present terminus in the city of Alton to the present terminus of the Terre Haute and Alton Railroad in said city, and to unite with the road of said last-mentioned company, and
38 to contract with and use the road of said Terre Haute and Alton Railroad Company from such point of union to the intersection of said last-mentioned road with the road of the Belleville and Illinoistown Railroad Company, near Wood River, in Madison County, upon such terms and conditions as shall mutually be agreed upon by the said Terre Haute

and Alton Railroad Company and the said Chicago, Alton and St. Louis Railroad Company; or in case said companies shall not agree, then upon such terms as shall be fixed by disinterested persons skilled and experienced in the management of railroads, one to be named by each company, and the two, in case of disagreement, to choose a third, whose decision shall be final, but neither company shall select a person objectionable to the other. Before said last-mentioned extension shall be allowed, the said Chicago, Alton and St. Louis Railroad Company and the Terre Haute and Alton Railroad Company shall locate and establish a general union depot in said city of Alton, and keep and maintain the same. In case the said Terre Haute and Alton Railroad Company shall not within sixty days after being requested so to do by the said Chicago, Alton and St. Louis Railroad Company execute and deliver to said last-mentioned company their consent in writing to the terms of this act, and also a contract authorizing them to use that part of the road of the said Terre Haute and Alton Railroad Company between its present terminus in Alton and the said intersection with the Belleville and Illinoistown Railroad, upon the terms contemplated by this act, then the said Chicago, Alton and St. Louis Railroad Company shall have the power, and are hereby authorized, to extend their said road and unite with the road of the said Belleville and Illinoistown Railroad Company at or near Wood River, and at the most convenient point, not exceeding four miles from the city of Alton. The said Belleville and Illinoistown Railroad Company are hereby authorized to make running arrangements and contracts with the said Chicago, Alton and St. Louis Railroad Company and the Terre Haute and Alton Railroad Company, or either of them, and also to lease or sell to said last-mentioned companies, or either of them, the whole or any part of their road, and the said last-mentioned companies, or either of them, are authorized to make such contracts, lease, or purchase of said Belleville and Illinoistown Railroad; but no such contract, lease, or sale shall affect any contract heretofore made by either of said companies with the other.

SEC. 3. The said Belleville and Illinoistown Railroad Company shall have the right and are hereby authorized to contract with and use the road of the said Terre Haute and Alton Railroad Company from the intersection of said road near Wood River to the junction of the said Terre Haute and Alton Railroad Company with the road of the Chicago, Alton and St. Louis Railroad Company in Alton, and also to contract with and use the extension of the road of the Chicago, Alton and St. Louis Railroad Company from Alton to or near Wood River, or any part of the said extension, if the same shall be built as provided in the last section upon such terms and conditions as shall mutually be agreed upon by said companies respectively, or in case said companies shall not agree, then upon such terms and conditions as shall be fixed by disinterested persons, skilled and experienced in the management of railroads, one to be named by each company, and the two, in case of disagreement, to select a third, whose decision shall be final; but neither company shall select a person objectionable to the other.

SEC. 4. The said Chicago, Alton and St. Louis Railroad Company shall have power, for the purpose of paying its bonds, or the inter-

est thereon, or any debts due by said company without the State, to purchase bills of exchange for remittance.

This act shall take effect and be in force from and after its passage.

THOS. J. TURNER,
Speaker House Rep's.
G. KOERNER,
Speaker of Senate.

Approved Feb'y 14, 1855.

J. A. MATTISON.

39 *Act to incorporate Chicago & Alton R. R. Co.*

An act to incorporate the Chicago and Alton Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that James Robb, Charles Moran, Adrian Iselin, Nathan Peck, Louis Von Hoffman, Lewis H. Meyer, Septimus Crookes, William B. Ogden, Jacob Bunn, J. J. Mitchell, Joseph P. White, and E. M. Gilbert be, and are hereby, constituted commissioners with power to organize a corporation to be styled "The Chicago and Alton Railroad Company," subject to all the conditions, franchises, rights, and privileges conferred by this act.

SEC. 2. That the commissioners named in this act, or a majority of them, shall have power to acquire for themselves and their associates, by purchase, transfer, or conveyance, all and singular the railroad and all its property, real and personal, with the corporate rights, franchises, rights, privileges, and effects now or heretofore belonging to or owned or vested in the Alton and Sangamon Railroad Company, afterwards called the Chicago and Mississippi Railroad Company, and also the Chicago, Alton and St. Louis Railroad Company.

SEC. 3. That whenever the commissioners named in this act shall have filed in the office of the secretary of state evidence of their being in legal possession of the railroad and property described in the foregoing section of this act, together with a certificate of the judge of the United States circuit court for the northern district of Illinois that the liens secured and payments ordered to be made by the decree or order of said court, entered of record on the thirtieth day of November, A. D. 1859, and orders heretofore entered amendatory of and supplemental to said decree, have been fully paid or otherwise settled to the satisfaction of the parties interested therein, they, their successors, associates, and assigns, shall be and are hereby created a corporation and body politic by the name, style, and title of "The Chicago and Alton Railroad Company," and by that name and style shall have perpetual succession, and shall be capable in law of suing and being sued, to plead and be impleaded, to make and use a common seal, to alter and renew the same at pleasure, and to do and perform all such acts and to make all such contracts proper and necessary for the successful operation of the railroad referred to in this act; and such commissioners shall act as the first board of directors of said corporation, and shall elect from their body a president who, with themselves, shall serve until their successors are appointed, as hereinafter provided.

SEC. 4. That the chief office of said corporation shall be in the city of

Chicago, and the board of directors named in this act shall serve until the first Monday in April, 1862, when an election of their successors shall be held in the city of Chicago, at the office of the corporation, under the control of three commissioners appointed by the directors named in this act; and said election shall be preceded by thirty days' notice, published in one or more newspapers printed in the cities of Chicago and New York. The said board shall be composed of seven directors, a majority of whom shall be citizens of the State of Illinois; each director shall be a bona fide stockholder, and the owner of at least one hundred shares of the stock of the corporation. A failure to elect directors shall not dissolve the corporation, but the directors in office shall continue the exercise of their functions until a new board is duly elected; and any vacancy occurring otherwise than by limitation provided in this act may be filled by a vote of members of said board continuing to act as such.

SEC. 5. That the president and directors of said corporation shall have power, and are hereby authorized, in virtue of an agreement made, had, and concluded on the tenth day of January, A. D. 1860, in the city and State of New York, by and between the bondholders of the Chicago and Mississippi Railroad Company and the Chicago, Alton and St. Louis Railroad Company, to issue first-mortgage bonds, income bonds, preferred stock, and common stock; and a majority of the bondholders of the aforesaid corporations who are parties to said agreement may amend and alter its stipulations in any manner not inconsistent with the provisions of this act; provided, nevertheless, a certified copy of said agreement shall be recorded in the office of the secretary of state of this State previous to the issue of said first-mortgage bonds, income bonds, preference stock, and common stock.

SEC. 6. That the president and directors of said corporation shall have power to assume, compromise, or adjust any debts or liabilities of the corporations which held or controlled said railroad prior to its sale and purchase by the commissioners named in this act.

SEC. 7. That the president and directors of said corporation shall have power and are hereby authorized to create a first mortgage or lien upon its entire property, real and personal, and its franchises, rights, and privileges to secure the payment of its first-mortgage bonds; and the more effectually to secure said bonds, any purchaser or purchasers under said first mortgage or the railroad of said corporation and of its property, real and personal, shall, in virtue of such purchase, and from the date thereof, *shall* be vested with all the franchises, rights, and privileges conferred by this act, with power to use, enjoy, and maintain the same as the successor or successors in office of the board of directors authorized and provided for in this act, and as fully as said board could do.

SEC. 8. That the president and directors shall not have power to make or execute any mortgage, lien, or deed of trust, except for the purposes authorized in section seven of this act; nor shall they issue or create any income bonds, preferred stock, or common stock, except for the purposes as provided for in an agreement by and between the bondholders of the Chicago and Mississippi Railroad Company and the Chicago, Alton and St. Louis Railroad Company, a duly certified copy of which shall be recorded in the office of secretary of state of this State.

SEC. 9. That the capital stock of said corporation shall be represented

by the preferred stock and common stock, as provided for in section eight of this act; but the same may be increased by the president and directors of said corporation, by and with the consent in writing of three-fourths of its stockholders.

SEC. 10. That the president and directors of said corporation shall not have power to create any debts or liabilities without the consent in writing of three-fourths of its stockholders, except those incurred for necessary supplies in operating said road, and as provided in the fifth section of this act.

SEC. 11. That the president and directors of said corporation, by and with the written consent of a majority of its stockholders, shall have power to acquire, by lease, purchase, or otherwise, any extension of its road necessary and proper to its business; and all the property so acquired shall become part of the property of said corporation and shall be as fully (subject) to the provisions of this act as if the same constituted part of the original purchase by said commissioners hereinbefore named; and said corporation hereby created shall renew the lease now subsisting between the Joliet and Chicago Railroad Company and James Robb and Charles Congdon, receivers of the St. Louis, Alton and Chicago Railroad, and upon such terms and conditions as may be agreed upon by and between the proper officers of said companies; and in case such officers shall be unable to agree on such terms, then each of said companies shall appoint an arbitrator or referee, who shall be disinterested persons; and in case such arbitrators or referees shall be unable to agree, they shall appoint an umpire whose award shall be final.

SEC. 12. That at all meetings of stockholders of said corporation, convened for the election of its directors, or for other purposes, each holder or holders of its first mortgage and income bonds shall be entitled to votes corresponding to the number of said bonds which he, she, or they may hold at the time of holding said meetings. And it is further provided that each and every share of stock of the corporation shall be entitled to one vote at all meetings of its stockholders, and shall be voted in person or by proxy.

SEC. 13. That the president and directors of said corporation shall have power to do everything necessary to preserve and maintain its railroad property and effects not inconsistent with the provisions of this act, and may prescribe by-laws for the government of its officers, fix the rates of toll in the transportation of freight and passengers over its railroad, and ordain rules and regulations for the division of its profits, and the mode and manner of keeping books for the transfer of its stock.

41 SEC. 14. That the president and directors of said corporation shall submit to a meeting of stockholders, to be convened in the cities of New York or Chicago, one month before an election of directors, a complete statement of its operations for the preceding year, which shall be examined, with the accounts of said corporation, by a committee of three stockholders, appointed at said meeting, and who shall report in writing on the accounts and affairs of the corporation at the meeting convened to elect its directors.

SEC. 15. That the filing or recording in the office of the secretary of state of the State of Illinois, by the commissioners named in this act, or the survivors of them, of the certificates described and designated in the third section of this act, shall be construed as the assent of the parties in

interest to their act of incorporation, which shall take effect from and after the filing of said certificate.

SEC. 16. Nothing contained in this act shall alter or impair the existing rights of any creditor or creditors of the several corporations heretofore known as the Chicago and Mississippi Railroad Company, the Alton and Sangamon Railroad Company, the Chicago and St. Louis Railroad Company, and the St. Louis, Alton and Chicago Railroad Company, to prosecute and enforce against such corporation any claim or demand whatever, either in law or equity, against such companies.

SHELBY M. CULLOM,
Speaker of the House of Reps.
FRANCIS A. HOFFMAN,
Speaker of the Senate.

Approved, Feb. 18th, 1861.

RICHARD YATES,
Governor.

Act to amend act to incorporate Chicago & Alton R. R. Co.

Originated in the senate.

J. F. NASH, *Sec'y.*

An act to amend an act entitled "An act to incorporate the Chicago and Alton Railroad Company," approved February 18, 1861.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the general assembly, that an annual meeting of the stockholders and of the bondholders of said corporation entitled to vote under the provisions of the act to which this is an amendment, shall be held in the city of Chicago on the first Monday in April in each and every year after the passage of this act. Such meetings shall be held in pursuance of such notice, and conducted in such manner as the by-laws of said corporation may from time to time prescribe.

SEC. 2. That at the first annual meeting of the share and bond holders of said corporation, held in pursuance of the provisions of this act, there shall be elected by the stockholders and voting bondholders of said corporation so many directors of said corporation as shall, with the directors then in office, make the entire number of directors nine in all. Each director so elected shall be a bona fide stockholder in said corporation; and a plurality of the votes cast at such election shall be sufficient to elect. At least five of the nine directors of said corporation shall be citizens of the State of Illinois.

SEC. 3. The board of directors of said corporation, at the first meeting thereof held after the election of the directors provided for in section two of this act, shall be divided into three classes, in the manner following, that is to say: The names of three directors shall be drawn by lot from the whole number of directors, and the three directors whose names are so drawn in manner aforesaid shall be and continue to serve as directors of said company for the term of three years from the date of the first annual meeting of the stockholders hereinbefore provided for. From

the six directors remaining after the selection of the first three directors whose names have been selected in the manner last aforesaid, shall in like manner be drawn by lot the names of three of such remaining directors, and these three so drawn shall be and continue to serve as directors of said company for the term of two years from the time of holding the first annual meeting of the stockholders hereinbefore provided for; and the three directors then remaining after the selection of the six directors in manner aforesaid shall be and continue to serve as directors of said company for the term of one year from the time of holding the first annual meeting of the stockholders hereinbefore provided for.

SEC. 4. At each and every annual meeting succeeding the first held in pursuance of the provisions of this act there shall be elected by the stockholders and voting bondholders of the said corporation three persons, each of whom shall be a bona fide stockholder in said company, who shall
42 serve as directors of said corporation for the term of three years from the date of their election, in the room and stead of the three directors whose term of office shall have then expired as provided by this act; and the directors so elected shall continue to serve as such until their successors are elected, chosen, and qualified in the manner aforesaid.

SEC. 5. All vacancies occurring, from whatever cause, in the board of directors during the current year, between the annual meetings for the election of directors as hereinbefore provided, shall and may be filled by and upon the vote and selection of a majority of the remaining or continuing directors; and the person or persons so selected to fill such vacancy or vacancies so occurring as aforesaid shall be and continue to act as director or directors of said company until the next annual meeting of the stockholders of said company held as hereinbefore provided; but in no case shall any person be elected a director in said company, in pursuance of the provisions of this section, unless and until the name of such person shall have been submitted, in writing, to the board of directors at least one week previous to the voting for and election of such person to be director as aforesaid.

SEC. 6. A failure or omission to elect directors of said company at the time and in the manner hereinbefore provided, in any or either of the cases hereinbefore mentioned, shall not be held, deemed, or taken to work or operate as a dissolution of said company or corporation, but the directors in office as such at the time immediately preceding or at the time at which an election of directors should, pursuant to the provisions hereinbefore contained, take place, shall be and continue to act as directors of said company until such election shall be duly held in pursuance of the terms and provisions of this act.

SEC. 7. The president of said board of directors shall be nominated and elected by the members thereof from their own body, and such election shall be decided by vote or ballot, or in such other manner as said board of directors may prescribe; and the person so nominated and elected as president aforesaid shall hold office for the term of one year from the date of his election, or until his successor shall be duly elected and qualified.

SEC. 8. The corporate powers of said corporation shall be vested in and exercised by the president and board of directors elected and chosen as aforesaid, in the manner hereinbefore provided. Said president and board

of directors shall have power to call special meetings of the stockholders and voting bondholders of said company, whenever it is deemed expedient so to do, and to prescribe all rules, regulations, and by-laws which may be necessary and proper for the administration of the affairs of said corporation, or for the complete exercise of the corporate powers vested in the same. A majority of said board of directors shall constitute a quorum for the transaction of business.

SEC. 9. The said corporation are hereby authorized and empowered to build a second or double track along the entire line of railroad now operated by it between the city of Chicago and the terminus of said line on Bloody Island, opposite the city of St. Louis, in the State of Missouri. The said double track may be built, from time to time, along the portions of said line where, in the opinion of the board of directors, the traffic of said company shall most require it.

SEC. 10. The capital stock of said corporation may be increased, from time to time, by and with the written consent of three-fourths of the stockholders of said company, to an amount not exceeding the cost of the railroad of said company, its appendages, and other property now held by said company, or which may hereafter be purchased or acquired; and such additional stock may be sold, or otherwise disposed of, in such manner as a majority of the directors of said corporation may deem expedient.

SEC. 11. Section fourteen of the act entitled "An act to incorporate the Chicago and Alton Railroad Company," is hereby repealed.

SEC. 12. This act shall be deemed a public act, and shall take effect from and after the date of its passage.

SEC. 13. Nothing in this act shall be so construed as to give permission to said company to lay down any track or tracks in, upon, or across any street, public landing, or public ground, in any town or city without the consent of the duly constituted authorities of such town or city first had and obtained, nor to annul any arrangement or contract now binding on said company.

43

ALLEN C. FULLER,
Speaker of House of Representatives.
WM. BROSS,
Speaker of the Senate.

Approved Feb'y 16th, 1865.

RICHARD J. OGLESBY.

UNITED STATES OF AMERICA,
State of Illinois, Office of Secretary, ss:

I, Henry D. Dement, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of—

1st. An act to construct a railroad from Alton, in Madison County, to Springfield, in Sangamon County, approved February 27, 1847.

2nd. An act entitled "An act to extend the Alton and Sangamon Railroad Company, incorporated February 27th, 1847," approved February 11th, 1851.

3rd. An act to change the name and further amend the charter of the Alton and Sangamon Railroad Company, approved June 19th, 1852.

4th. An act further to amend the charter of the Chicago and Mississippi Railroad Company, approved Februar' 28th, 1854.

5th. An act to change the name and to amend the charter of the Chicago and Mississippi Railroad Company, and to authorize said company and the Belleville and Illinoistown Railroad Company and the Terre
44 Haute and Alton Railroad Company to make contracts and running arrangements with each other, or to lease or buy the road of the said Belleville and Illinoistown Railroad Company, approved February 14th, 1855.

6th. An act to incorporate the Chicago and Alton Railroad Company, approved February 18th, 1861.

7th. An act to amend an act entited "An act to incorporate the Chicago and Alton Railroad Company, approved February 18th, 1861," approved February 16th, 1865, the originals of which are now on file in this office.

In witness whereof I have hereunto set my hand and affixed the great seal of State. Done at the city of Springfield this 31st day of January, A. D. 1882.

[SEAL.] HENRY D. DEMENT,
Secretary of State.

45 *Act to incorporate Alton & St. Louis R. R. Co.*

Originated in the senate.

F. D. PRESTON,
Sec'y Senate.

An act to incorporate the Alton and St. Louis Railroad Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that Samuel A. Buckmaster, John J. Mitchell, and others, who have purchased or may hereafter purchase of the Sangamon and Northwest Railroad Company so much of the branch of said railroad of said company as lies between Alton, in Madison County, and Bloody Island, opposite the city of St. Louis, Missouri, and their associates, successors, and assigns, are hereby created a body politic and corporate, under the name and style of the Alton and St. Louis Railroad Company, and by that name be, and they are hereby, made capable in law and in equity to sue and be sued, plead and be impleaded, defend and be defended, in any court of law and equity in this State or elsewhere; to make, have, and use a common seal, and the same to renew and alter at pleasure; and shall be and are hereby vested with all powers, privileges, and immunities which are or may be necessary to construct, complete, and operate a railroad with double or single track from Alton to any point opposite the city of St. Louis, Missouri, and for that purpose to enter upon and take possession of so much land as may be necessary to construct, complete, and operate said railroad and its appendages; and if said company cannot agree with the owner or owners of said land, taken as aforesaid, it may be lawful for them to proceed in the manner now provided by the laws of this State for the condemnation of lands by incorporated companies.

SEC. 2. The capital stock of said company shall be five hundred thousand dollars, and which may be increased by said company to any sum not exceeding one million of dollars, which may be divided into shares of one hundred dollars each, which shall be deemed personal property, and

may be issued and transferred in such manner as the board of directors may prescribe.

SEC. 3. The affairs of said company shall be managed by a board of three directors, which may be increased to nine, and Samuel A. Buckmaster, John J. Mitchell, and William H. Mitchell are hereby appointed the first board, who shall hold their offices until their successors be elected and qualified, in such manner as may be prescribed by the by-laws of said company. Said board shall have the power of electing one of their number president, and such other officers as may be prescribed by the by-laws; and said corporation shall be, and is hereby, vested with all the powers conferred upon railroad incorporations by the general railroad laws of the State of Illinois, or any amendment now made or hereafter to be made thereto.

SEC. 4. Said Alton and St. Louis Railroad Company shall have the power to purchase and receive, by transfer, from the Sangamon and Northwest Railroad Company, the branch road aforesaid; and after such transfer the said corporation hereby created shall be the owners of said branch road, and all of the acts done by said Sangamon and Northwest Railroad Company, their agents or contractors, toward establishing or constructing the aforesaid branch road, or acquiring the right of way, or any other real estate, for the use of said branch road, be, and the same are hereby, sanctioned and declared legal and valid, and the title to so much of the said branch road as is now constructed, in whole or in part, and to all the right of way and other real estate acquired for the purposes aforesaid, shall be thereafter vested in the said Alton and St. Louis Railroad Company; and said company shall have the power to enter upon and take possession of the said branch road and to complete the same to its present termination on Bloody Island, or continue or construct the same to any other point on the Mississippi River opposite to the city of St. Louis, in the State of Missouri.

SEC. 5. Said corporation shall have power to unite its railroad with any other railroad now constructed, or which shall hereafter be constructed, upon such terms as may be mutually agreed upon between the companies so connecting; and also shall have the power to lease its railroad, with the benefit of all the rights, privileges, and franchises hereby conferred, to any other corporation or person or persons; and for the purposes aforesaid, full power is hereby given to the said company to make, execute, and deliver all such contracts and instruments of writing as shall be necessary for said purposes. Said company is also hereby authorized from time to time to borrow such sums of money as may be necessary for the pur-
46 poses of said company, and at any rate of interest not exceeding ten per cent. per annum, and to issue and dispose of their bonds, in denominations of not less than one hundred dollars, for any amount so borrowed, and to mortgage their corporate property, real or personal, and their franchise, or convey the same, by deed of trust, to secure the payment of any money so borrowed, or any other debt of said company. And all mortgages or deeds of trust of said company, on any personal property of said company, shall be valid liens thereon, although not acknowledged, as is required by the statute touching the execution and recording of chattel mortgages, and the provisions of said statute shall not be held to apply to any mortgages or deeds of trust which shall be made by said company.

SEC. 6. This act shall be a public act, and shall take effect and be in force from and after its passage.

WM. R. MORRISON,
Speaker of the House of Rep's.
JOHN WOOD,
Speaker of the Senate.

UNITED STATES OF AMERICA,
State of Illinois, Office of Secretary, ss:

I, Henry D. Dement, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an act to incorporate the Alton and St. Louis Railroad Company, approved February 4th, 1859, the original of which is now on file in this office.

In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this 31st day of January, A. D. 1882.

[SEAL.] HENRY D. DEMENT,
Secretary of State.

47 *Act to construct R. R. from Joliet to Chicago.*

An act to construct a railroad from Joliet to Chicago, approved February 15, 1855. (Laws of Illinois, 1855, p. 263.)

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that Hiram Norton, Robert Milne, George Barnet, William Gooding, and Joel Manning, and their associates, successors, and assignees are hereby created a body corporate and politic, under the name and style of The Joliet and Chicago R. R. Company, for the term of thirty years, and by that name be and they are hereby made capable in law and in equity to sue and be sued, plead and be impleaded, defend and be defended in any court of law and equity in this State or in any other place; to make, have, and use a common seal, and the same to renew and alter at pleasure, and shall be and are hereby vested with all the powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth; and the said company are hereby authorized and empowered to locate, construct, and finally complete a R. R. from the depot of the Chicago and Mississippi R. R. Company, at the city of Joliet, in Will County, through the incorporated village of Lockport, in the same county, to the city of Chicago, in the county of Cook, or to any railroad leading out of Chicago and north of Lockport, and for this purpose the said company are authorized, upon the most eligible and proper route, and as above directed, to lay out their said R. R. wide enough for a single or double track through the whole length, and for the purpose of cuttings, embankments, stone, and gravel may take as much land as may be necessary for the proper construction and security of said railroad.

SEC. 2. The capital stock of said company shall consist of one million of dollars, and may be increased to fifteen hundred thousand dollars, to be divided into shares of one hundred dollars each. The immediate government and direction of said company shall be vested in five directors, who shall be chosen by the stockholders of said company in

the manner hereinafter provided, who shall hold their offices for one year after their election, and until others shall be duly elected and qualified to take their places as directors, and said directors, a majority of whom shall form a quorum for the transaction of business, shall elect one of their number to be president of the company; that said board of directors shall have power to appoint all necessary clerks, secretaries, and other officers necessary in the transaction of the business of said corporation.

SEC. 3. The said corporation is hereby authorized, by their agents, surveyors, and engineers, to cause such examinations and surveys to be made of the ground and country between said city of Joliet through said village of Lockport and Chicago as shall be necessary to determine the most advantageous route for the proper line or course whereon to construct their railroad; and it shall be lawful for said company to enter upon and take possession of and use all such lands and real estate as may be necessary for the construction of and maintenance of their said railroad; provided, that all lands or real estate entered upon and taken possession of, and used by said corporation for the purposes and accommodation of said railroad, or upon which the site for said railroad shall have been located and determined by the said corporation, shall be paid for by the said company in damages, if any be sustained by the owner or owners thereof by the use of the same for the purposes of said railroad; and all lands taken and entered upon for the use of said corporation which are not donated to said company shall be paid for by said corporation at such prices as may be mutually agreed upon by said corporation and the owner or owners of such land; and in case of disagreement the price shall be estimated, fixed, and recovered in the manner provided for taking lands for the construction of public roads, canals, or other public works, as prescribed by the act concerning right of way, approved March 3, 1845.

SEC. 4. If any person shall wilfully, maliciously, or wantonly, and contrary to law obstruct the passage of any car on said railroad, or any part thereof, or anything belonging thereto, or shall damage, break, or destroy any part of the said railroad, or any implements, or buildings, he, she, or they, or any person assisting, shall forfeit and pay to the said company for every such offense treble the amount of damages that shall be
48 proved before any competent court has been sustained, and be sued for in the name and behalf of said company; and such offender or offenders shall be deemed guilty of a misdemeanor, and shall be liable to an indictment in the same manner as other indictments are found in any county or counties where such offense shall have been committed; and upon conviction every such offender shall be liable to a fine not exceeding five thousand dollars for the use of the county where such indictment may be found.

SEC. 5. The time of holding the annual meeting of said company for the election of directors shall be fixed and determined by the by-laws of said company; and at all meetings each stockholder shall be entitled to a vote in person or lawful proxy, one vote for each share of stock he, she, or they may hold bona fide in said company.

SEC. 6. The persons named in the first section of this act are hereby appointed commissioners, who, or a majority of whom, are hereby authorized to open subscription books for said stock at such places as they may deem proper, and shall give at least thirty days' notice of the time and place when and where such books will be opened in some news-

paper having a general circulation, and printed in the cities of Chicago and Joliet, and shall keep said books open until the whole of said capital stock shall be taken; said commissioners shall require each subscriber to pay five dollars on each share subscribed at the time of subscribing; the said commissioners shall call a meeting of stockholders by giving thirty days' notice in newspapers having a general circulation in the cities of Chicago and Joliet, and at such meeting it shall be lawful to elect the directors of said company; and when the directors of said company are chosen the said commissioners shall deliver said subscription books, with all sums of money received by them as commissioners, to said directors. No person shall be a director unless he own at least ten shares of the capital stock.

SEC. 7. That the right of way and the real estate purchased for the right of way by said company, whether by mutual agreement or otherwise, or which shall become the property of the company by operation of law, as in this act provided, shall upon the payment of the amount of money belonging to the owner or owners of said lands as a compensation for the same, become the property of said company in fee-simple.

SEC. 8. The said corporation may take and transport upon said railroad any person or persons, merchandise, or other property by the force and power of steam or animals, or any combination of them, and may fix, establish, and take, and receive such rates of toll for all passengers and property transported upon the same, as the said directors shall from time to time establish; and the directors are hereby authorized and empowered to make all necessary rules, by-laws, regulations, and ordinances that they may deem necessary and expedient to carry into effect the provisions of this act, and for the transfer and assignment of its stock, which is hereby declared personal property and transferable in such manner as shall be provided by the by-laws and ordinances of said corporation.

SEC. 9. The directors of said company, after the same is organized, shall have power to open books, in the manner prescribed in the sixth section of this act, to fill up the additional five hundred thousand dollars of stock, or any part thereof, at such time as they may deem it for the interest of said company, and all the installments required to be paid upon the stock originally to be taken, and what may be taken to increase said capital, shall be paid at such times and in such sums as said directors may prescribe.

SEC. 10. The said company are authorized and empowered to borrow from time to time, by the sale of bonds or otherwise, such sum or sums of money not exceeding the amount of the capital stock of said company as in their opinion may be deemed necessary for the purchase of iron, and depot grounds, and generally for the construction and occupancy of said road, which bonds may bear any rate of interest therefor not exceeding ten per cent., and to pledge and mortgage the said road and its appendages, or any part thereof, or any other property or effects, rights, credits, or franchise of the said company, as security for any such loan of money and interest thereon, and to dispose of the bonds issued for such loan at such rates or on such terms as the board of directors may determine.

49 SEC. 11. In case of the death, resignation, or removal of the president, vice-president, or any director, at any time between the annual

elections, such vacancy may be filled for the remainder of the year, whenever they may happen, by the board of directors, and in case of the absence of the president and vice-president the board of directors shall have power to appoint a president pro tempore, who shall have and exercise such powers and functions as the by-laws of the said corporation may provide. In case it should at any time happen that an election shall not be made on any day on which in pursuance of this act it ought to be made, the said corporation shall not for that cause be deemed dissolved, but such election shall be held at any other time directed by the by-laws of said corporation.

SEC. 12. That when the lands of any femme covert, person under age, non compos mentis, or out of this State, shall be taken in the construction of said railroad, as is provided by this act, the said corporation shall pay the amount that shall be awarded as due to the said last-mentioned owners, respectively, whenever the same shall be lawfully demanded, together with six per cent. per annum. That to ascertain the amount to be paid to the persons named in this section for lands taken for the use of said corporation, it shall be the duty of the governor of this State, upon notice given to him by the said corporation, to appoint three commissioners, to be persons not interested in the matter to be determined by them, to determine the damages which the owner or owners of the land or real estate so entered upon by said corporation has or have sustained by the occupation of the same, and it shall be the duty of the said commissioners, or a majority of them, to deliver to said corporation a written statement of the award or awards they shall make, with a description of the land or real estate appraised, to be recorded by the said corporation in the clerk's office of the county in which the land or real estate so appraised shall be, and then the said corporation shall be deemed to be seized and possessed of the fee-simple of all such lands or real estate as shall have been approved by the said commissioners.

SEC. 13. That whenever it shall be necessary for the construction of said railroad to intersect or cross any water course, or railroad, or highway, it shall be lawful for the corporation to construct their railroad across or upon the same, provided that the corporation shall restore the water course, railroad, or highway thus intersected to its former state, or in a sufficient manner not to have impaired its usefulness.

SEC. 14. That the capital stock of said company shall be deemed personal property, and transferable in such manner as the said corporation shall by its by-laws prescribe.

SEC. 15. That it shall be lawful for the directors to require payment of the sums subscribed to the capital stock at such times, and in such proportions, and on such conditions as they shall deem fit, under the penalty of forfeiture of all previous payments thereon, and shall give notice of the payments thus required, and of the time and place when and where the same are to be paid, at least ninety days previous to the payment of the same, in some public newspaper having a general circulation in the cities of Chicago and Joliet.

SEC. 16. The width of said railroad is to be determined by the said corporation within the limits prescribed by the first section of this act.

SEC. 17. It shall be lawful for the company created by this act to unite with any other railroad company which may have been or hereafter shall

be incorporated by this State under any law thereof, and to grant to any such company the right to construct and use any portion of the road hereby authorized to be constructed upon such terms as may be mutually agreed upon between said companies.

SEC. 18. This act shall be deemed and taken as a public act, and shall be construed beneficially for all purposes herein specified or intended; and the said company shall commence the said work within two years and complete the same within five years from the passage of this act.

50 *Act to amend act to construct a R. R. from Joliet to Chicago.*

An act to amend an act entitled "An act to construct a railroad from Joliet to Chicago," approved February 15, 1855.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that so much of the act entitled "An act to construct a railroad from Joliet to Chicago," approved February 15, 1855, as limits the duration of the corporation thereby created to the term of thirty (30) years, and the time for the completion of the railroad therein mentioned, and its appendages, to the term of five (5) years, be, and the same is hereby, repealed.

SEC. 2. The capital stock of said company may be increased from time to time by a vote of stockholders representing a majority of stock, to an amount equal to the cost of the railroad in said act mentioned, its appendages and property, purchased or acquired, or that may hereafter be purchased or acquired; and the said company shall have power to borrow such sums of money from time to time as may in the opinion of the directors or a majority of them be deemed expedient, and may issue and dispose of its bonds or obligations for the purposes aforesaid, and may mortgage all or any portion of its property and franchises now ac-
51 quired, or that hereafter may be acquired, to secure the payment of any debt contracted by said company by such form of deed or deeds and with such powers of sale therein contained as the said directors or a majority of them may think fit and proper; and such company may sell its bonds or obligations, either within or without this State, at such rates and prices as the said directors or a majority of them may sanction and determine, and said sales shall be as valid and obligatory upon the company for the full amount of the bonds or obligations sold as if such bonds or obligations were sold at par value.

SEC. 3. The said company may from time to time purchase, occupy, and hold such depot grounds or any other property that its directors or a majority of them may deem expedient for extending its railroad business and traffic; and all the rights and privileges of said company are hereby extended to the property which may be thus acquired, with power to exercise the same.

SEC. 4. The said company may change its corporate name and style to such name and style as its directors, by resolution, may order and direct upon filing in the office of the secretary of state a copy of such resolu-
52 tion within thirty days after the passage of the same, and publishing a like copy in one or more newspapers published in the cities of Joliet and Chicago.

Approved February 20, 1861.

Contract of Wiggins Ferry Co. with Alton & St. Louis R. R. Co.

Contract of the Wiggins Ferry Company with the Alton and St. Louis Railroad Company, dated April 28, 1864.

This agreement, made this twenty-eight' day of April, in the year of our Lord one thousand eight hundred and sixty-four, by and between the Wiggins Ferry Company, a corporation chartered by the State of Illinois, and the Alton and St. Louis Railroad Company, a corporation chartered by the same State, witnesseth:

That whereas the said parties are both anxious to secure permanently to themselves respectively, and to their assigns, the objects hereinafter mentioned, that is to say, the party of the first part, the ferrying business between the Illinois and the Missouri shore opposite the city of St. Louis, of all the freights and passengers carried, or to be carried, by the above party of the second part, and also the further sum of twenty-five hundred ($2,500) dollars per annum, to be paid by the said party of the second part to the said party of the first part, as hereinafter specified, and the said party of the second part the securing of proper facilities for depot grounds, for the operation and doing of the business of their road at its western terminus on the Mississippi River, opposite to the city of St. Louis:

Now, for the purpose of carrying out the above-mentioned objects, the said parties have agreed and covenanted as follows, that is to say, the said ferry company, party of the first part, in consideration of the covenants and stipulations of the said railroad company, party of the second part herein contained, to be observed and fulfilled by the said party of the second part, does give, grant, and convey unto the said party of the second part, and its assigns, as hereinafter named and limited, the right to construct, maintain, and use in, through, and over the piece or parcel of ground hereinafter described, all such railroad tracks, depots, warehouses, and other buildings and erections as the said party of the second part shall find to be necessary or convenient to be constructed, maintained, and used for the purpose of transacting the business of the said party of the second part, and to keep thereon without disturbance all property of every description belonging to or which may be in the possession, charge, or custody of the said party of the second part, and to take upon and over the said piece of ground all persons and property, and to use the same in the transaction of the business of the said party of the second part, as the said party of the second part may find necessary and convenient.

The said piece or parcel of ground is situated on what is known as Bloody Island, in the county of St. Clair, in the State of Illinois, opposite to the city of St. Louis, in the State of Missouri, and has a front on the west end, or towards the Mississippi River, of four hundred feet, by a depth eastwardly of fifteen hundred feet, and is described as follows, to wit: beginning at a point two hundred and sixty feet from low-water mark of the Mississippi River, on the southern line of the piece or parcel of ground heretofore leased for depot purposes by said party of the first part to the Ohio & Mississippi Railroad Company, and running southwardly four hundred feet, at the distance of two hundred and sixty feet from
53 low-water mark as aforesaid, and thence eastwardly fifteen hundred

feet on a line parallel with the south line of the piece or parcel of land leased as aforesaid to the said Ohio & Mississippi Railroad Company, and thence northwardly four hundred feet to a point coincident with the south line of the land leased as aforesaid to the said Ohio & Mississippi Railroad Company, and fifteen hundred feet from the initial point, and thence with that line to the place of beginning, which piece or parcel of ground will be bounded as follows: on the west by a space of two hundred and sixty feet, as above mentioned, belonging to the said party of the first part, and which space of two hundred and sixty feet is to be used as herein specified; on the south and east by land of the party of the first part; on the north in part by land of said party of the first part, and the ground heretofore leased as aforesaid to the said Ohio & Mississippi Railroad Company, it being understood that the south line of the land herein leased shall be parallel to the south line of the land leased as aforesaid to the said Ohio & Mississippi Railroad Company.

And the said party of the first part, in consideration of the covenants herein contained, does give and grant to the said party of the second part the right of way from the east end of said piece or parcel of land through and over their land in a northwardly direction towards the town of Brooklyn, in said county of St. Clair, and which right of way shall not exceed one hundred feet through the slough or former bed of the river and fifty feet on the main shore. The land first above described, as well as the location of the right of way herein granted, are exhibited on a map hereto attached, and made a part of this agreement.

To have and to hold the said several rights and easements in the parcels of ground above described unto the said party of the second part, or the assignee of the said party, as hereinafter mentioned, so long as the same shall be used and employed for the uses and purposes herein mentioned and specified, and for no other, even forever.

In consideration of the said covenants, the said party of the first part further agrees to furnish and maintain good and convenient wharf-boats and steam ferry-boats, to do with promptness and dispatch all the ferrying required for the transit of passengers and freight coming from or going to said railroad (or the assignee hereinafter mentioned) over the river, navigation permitting, except that the said ferry company may abandon the business at any time by giving the railroad company six months' notice of their determination to do so, in which event the right of the said party of the second part herein to the possession of the parcel of ground above specified shall remain unaffected, excepting as to the payment of the said twenty-five hundred dollars, which are to be paid in any event.

The rates of ferriage to be charged on such freight and passengers shall be reasonable, and if at any time the railroad company shall be dissatisfied with the rates charged, and the ferry company shall not be willing to reduce the same, the question at issue shall be submitted to the decision of arbitrators, to be appointed in the manner hereinafter provided.

In consideration of the lease aforesaid, and the covenants entered into on the part of the said ferry company, the said railroad company covenants and agrees that they will always employ the said ferry to transport across the said river all persons and property which may be taken across the said river, either way, to or from the Illinois shore, either for the purpose of being transported on said railroad or having been brought to the said river Mississippi upon said railroad.

So that the said ferry company, its legal representatives or assigns, owners of the said ferry, shall have the profits of the transportation of all such passengers, persons, and property taken across said river, either way, by the said railroad company; and that no other than the Wiggins Ferry shall ever, at any time, be employed by the said party of the second part, or the assignee herein mentioned, to cross any passengers or freight coming or going on said road.

And the said party of the second part, in consideration of the lease aforesaid, further covenants and agrees to pay it, the said party of the first part, or its assigns, the annual sum of twenty-five hundred dollars, to be made in quarterly payments, and to continue as long as the said party of the second part shall, under the lease herein given, continue to enjoy and possess the piece or parcel of land above described.

54 And the said party of the second part further covenants and agrees to pay all taxes and assessments, general or special, to which the said piece or parcel of land herein above described may be subjected to during the existence of this lease.

And the said party of the first part agrees to keep open the space of two hundred and sixty feet above described, lying between the low-water mark of the Mississippi River and the western end or extremity of the piece or parcel of land above described, to be used as a wharf and street, and which wharf said party of the second part, or the assignee hereinafter mentioned, shall have the right to use for the deposit of any property, either coming or going as freight on its road, free and clear of any charge for wharfage; provided, however, that the said property shall not remain on said wharf a longer time than forty-eight hours from the time it was first deposited thereon; and in the event the said property shall remain on the said wharf a longer period than forty-eight hours, it is agreed and understood that the same shall be liable to the same charge for wharfage, to be paid to the said party of the first part, as if the same belonged to individuals; it is, however, agreed that the exclusive right of the party of the first part to charge steamboats and other river crafts and rafts a reasonable price as wharfage for landing at said wharf is not affected or limited by this provision. And it is mutually agreed that all questions which may arise under this agreement, either with regard to ferry rates, ferry accommodations, or any other point or question growing out of this agreement, shall be submitted to arbitration, each party hereto selecting an arbitrator, and in the event that the two cannot agree, or if they agree upon some points and disagree as to others, then the two arbitrators shall have the right to select a third person as umpire, whose decision shall be binding and obligatory upon both parties.

It is agreed and understood that a street of the width of sixty feet across the parcel of land first above described, from north to south, and upon the eastern side of the island, shall be kept open as far as practicable for the passage of all persons and vehicles, with all grading that may be necessary for easy and safe passage across the railroad track of the said party of the second part, so that all animals, persons, and vehicles may pass safely across the said parcel of ground between the north and south lines thereof.

It is also agreed and understood that the parcels of land herein de-

scribed are to be used for the purposes of right of way, depots, and other buildings for the use of the said Alton and St. Louis Railroad, or for the same purpose by the Chicago and Alton Railroad, and for no other purpose whatever.

And it is further agreed and understood that the said party of the second part shall have the right to transfer and assign this agreement to the Chicago and Alton Railroad Company, in which event all the covenants, stipulations, and agreements herein above contained shall be as binding on the said Chicago and Alton Railroad Company as the same are now on the Alton and St. Louis Railroad Company.

And the said party of the second part further covenants that if at any time the covenants and agreements herein specified to be observed and fulfilled by the said party of the second part, or any of them, are not faithfully carried out and fulfilled by the said party of the second part, or the assignee hereinbefore mentioned, and shall continue unfulfilled and not carried out for sixty days after notice from the first party of such failure, then this lease shall be void and terminate, and the said party of the first part in that event shall have the right to re-enter upon said demised premises free and clear of any claim of the said party of the second part or said assignee.

55 In testimony whereof the said parties have caused their several corporate seals to be attached, and their presidents and secretaries to subscribe their names hereto, the day and year first above written.

Executed in duplicate, each being an original.

[SEAL WIGGINS FERRY CO.] LEWIS V. BOGY, [SEAL.]
Pres. Wiggins Ferry Co.

Attest:
HENRY L. CLARK,
Secretary.

[SEAL A. & ST. L. R. R. CO.] JOHN J. MITCHELL, [SEAL.]
President Alton & St. Louis R. R. Co.

W. H. REED,
Sec'y Alton & St. Louis Railroad Co.

The insertion of the following words, viz: "It is, however, agreed that the exclusive right of the party of the first part to charge steamboats and other river crafts and rafts a reasonable price as wharfage for landing at said wharf is not affected or limited by this provision," on the third page, and between the 8th and 10th line, and the erasure on the 22d line of same page, and also the erasure on the 29th and 30th line on second page, done before the signing and delivery.

Witness:
HENRY L. CLARK,
HENRY TRENDLEY.

Acknowledged by Lewis V. Bogy, president, and Henry L. Clarke, secretary, April 28, 1864.

Acknowledged by John J. Mitchell, president, and W. H. Reid, secretary, April 28, 1864.

Assignment of contract.

Assignment of foregoing agreement to Chicago and Alton Railroad Company, endorsed on same April 28, 1864.

STATE OF ILLINOIS,
Madison County, set:

In consideration of the sum of one dollar, to the Alton and St. Louis Railroad Company this day paid by the Chicago and Alton Railroad Company, the receipt whereof is hereby acknowledged, the said Alton and St. Louis Railroad Company hath this day bargained, sold, assigned, and transferred, and by these presents doth bargain, sell, assign, and transfer unto the Chicago and Alton Railroad Company, and to its successors and assigns, the within written agreement, and all the right, title, and interest in and to the lands, tenements, and easements therein mentioned, which it, the said Alton and St. Louis Railroad Company, now hath, by means of said instrument, or otherwise, subject, nevertheless, to the rents and covenants in said agreement contained.

In testimony whereof the said Alton and St. Louis Railroad Company hath caused its president and secretary to subscribe their names hereto, and hath caused its secretary to attach hereto its corporate seal, on this twenty-eighth day of April, A. D. 1864.

{ SEAL A. & ST. L. R. R. CO. }

JOHN J. MITCHELL,
President Alton & St. Louis R. R. Co.
W. H. REID,
Secretary Alton & St. Louis Railroad Co.

Acknowledged by John J. Mitchell, president, and W. H. Reid, secretary, April 28, 1864.

Deed and assignment recorded in St. Clair County, Illinois, May 2, 1864.

56 *Act to incorporate Madison County Ferry Co.*

Originated in the senate.

BEN. BOND,
Sec'y Senate.

An act to incorporate the Madison County Ferry Company.

Whereas Thomas G. Lofton, William Gillham, Moses Seeds, William Snyder, and John Wood, residents of Madison County, in this State, have represented to the general assembly that they have, in good faith, contracted with Abel Rathburn Corbin and Elizabeth Corbin, his wife, of the city of St. Louis, in the State of Missouri, for the ferry across the Mississippi River between North St. Louis and a point in Illinois five rods north of the line between townships two and three north, and also for the steam ferry-boat Brooklyn, and can have a title therefor; and whereas it has been represented that although the profits of said ferry have hitherto proved insufficient to induce any individuals to keep the same in operation for any considerable time, yet a company may be formed, under an act of

incorporation, who will be able to maintain said ferry in such a manner as greatly to promote the public convenience; therefore,

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That Thomas G. Lofton, William Gillham, William Snyder, Moses Seeds, and John Wood, and such others as may associate themselves with them, their successors and assigns, are hereby constituted a body corporate, by the name of The Madison County Ferry Company, for the purpose of conveying in steam or other boats persons and property from this State at a point five rods north of the place where the line between townships two and three north strikes the bank of the Mississippi River, to the opposite shore, at a place called North St. Louis. Said company shall have succession for ten years, may sue and be sued, contract and be contracted with; may have a common seal, and change the same at their pleasure during their corporate existence.

SEC. 2. The business of said company shall be under the entire control and management of five directors, to be chosen as hereinafter provided, which directors shall choose one of their number to preside over their deliberations. Said directors shall continue in office one year, and until their successors shall be elected and qualified.

SEC. 3. The capital stock of said company shall be twenty-five thousand dollars, to be divided into shares of one hundred dollars each, fifteen per cent. on each share to be paid at the time of subscribing, and ten per cent. to be paid every four months thereafter, if required by the directors.

SEC. 4. If any stockholder shall refuse or neglect to pay the balance of his stock for ten days after the same shall have become due, and after the same shall have been required by the directors, the president and directors may declare his stock forfeited for the benefit of the company.

SEC. 5. It shall be the duty of the president and directors to give notice by setting up at five of the most public places in the State, within six miles of said ferry, written or printed advertisements at least ten days previous to the time when payments are required to be made, said advertisements to state what per centum on the stock is required to be paid, and the place where and the person to whom the same must be paid.

SEC. 6. Samuel Squire, Moses Seeds, Thomas Gillham, John Ives, and Calvin Kinder are hereby appointed commissioners, whose duty it shall be to open books for the subscription of stock of said company, at such time and place as they may think proper, by setting up written or printed notices in five of the most public places in Six Mile Township, at least ten days previous to the opening of the books for subscription of stock, said books to remain open until all the stock is subscribed, or until otherwise directed by said commissioners.

SEC. 7. As soon as one-half of the capital stock of said company shall be subscribed according to the third section of this act, the aforesaid commissioners shall give notice to the stockholders in the manner prescribed in the sixth section of this act that an election will be held for the purpose of choosing five directors of said company, and such election shall be held at the time and place previously appointed and advertised. Each stockholder present shall be entitled to give one vote for every
57 share of stock owned by him. The commissioners aforesaid, or such

of them as may be present, shall be judges of the first election of directors, and shall certify under their hands the names of the persons duly elected to the office of directors; and the commissioners shall deliver to said directors the subscription books, together with all monies paid to them on stock.

SEC. 8. Elections of directors, subsequent to the election provided for in the preceding section, shall be held at some place in this State, within five miles of said ferry landing, at such place and at such time in the month of January in each year as the directors may think proper. For this purpose the directors are required to give ten days' previous notice, in the manner prescribed in the seventh section of this act, and to conduct the election in the same manner as the commissioners are required to conduct the election provided for in the said seventh section. If from any cause an election shall not be made at the time appointed, such omission shall not affect the existence of the company, but the president shall in such case appoint another day, as soon thereafter as may be, for the holding of such election.

SEC. 9. The president and directors shall have power to make all by-laws and regulations that may be necessary for the transaction of business and the good government of the company, and to alter or amend the same as often as may be necessary; provided that such by-laws and regulations shall not be in contravention of this act or of the Constitution or laws of the United States or of this State.

SEC. 10. The rates of toll and license of said ferry shall be under the control of the county commissioners' court in the manner now provided or hereafter to be provided by the laws of this State regulating ferries.

SEC. 11. No other ferry shall be established within one mile of the ferry authorized by this act during the existence of the said company; provided that the general assembly may repeal this section whenever in their opinion the public interest shall require it.

SEC. 12. The stock of said company shall be transferable only on the books of the company.

SEC. 13. The said company shall have power to hold real estate not exceeding six hundred and forty acres, to build ferry-houses, and build or purchase ferry-boats of any kind, to improve roads and bridges, to borrow money not exceeding the amount of their capital stock, to employ engineers and ferrymen, and generally to do such other things as shall be necessary to keep said ferry in operation.

SEC. 14. Said company may land its boat or boats at any point within one mile of its established place of landing whenever it may be necessary or convenient to do so without being required to pay for any additional license, and for that purpose may use any public road or street without let, hindrance, or charges from any persons whomsoever.

SEC. 15. The company hereby incorporated may continue in existence during the term of ten years from the passage of this act.

NEWTON CLOUD,
Speaker of the House of Representatives pro tem.
F. H. ANDERSON,
Speaker of the Senate.

Approved Feb. 3, 1880.

THO. CARLIN.

Act to amend act to incorporate Madison Co.

Originated in the house of rep's.

JNO. McDONALD,
Clk H. R.

An act to amend an act entitled "An act to incorporate the Madison Ferry Company."

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the act entitled "An act to incorporate the Madison Ferry Company," approved February 3, 1840, be continued in force for twenty years from the date of the passage of this act, and that the company thereby incorporated shall continue to exist during said extended term of twenty years.

SEC. 2. Said company shall keep good and sufficient boats and skilful hands to attend the same, so as at all times during proper hours to give a safe and speedy transmission to all passengers and their effects when the river is in such a condition as to admit of the same, and on failure to keep such boat or boats and hands attending the same all rights acquired under this act shall be forfeited.

NEWTON CLOUD,
Speaker of the House of Representatives.
JOSEPH B. WELLS,
Speaker of the Senate.

Approved Feb'y 11, 1847.

AUGUSTUS C. FRENCH.

58 *Act to amend charter of Madison County Ferry Co.*

Originated in the senate.

C. E. LIPPINCOTT,
Secretary.

An act to amend the charter of the Madison County Ferry Company.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the Madison County Ferry Company is hereby authorized to increase its capital stock to two hundred thousand dollars ($200,000), and thereafter from time to time to such amount as the directors of said company shall see proper, and to divide the same into shares of such amount as they shall deem most advisable.

SEC. 2. The next election of directors of said company shall take place on the first Wednesday of April, A. D. 1867, and elections of directors of said company shall be held every four years thereafter in perpetual succession. The present acting directors, and all directors hereafter elected, shall hold over until their successors shall be elected and qualified. In case any director shall cease to be a stockholder his office shall become vacant, and such vacancy, and all other vacancies in the board of directors,

shall be filled by the remaining directors. Each share of the capital stock shall be entitled to one vote in the election of directors.

This act shall be in force from and after its passage.

F. CORWIN,
Speaker of the House of Representatives.
WM. BROSS,
Speaker of the Senate.

Approved Feb'y 20, 1867.

R. J. OGLESBY.

UNITED STATES OF AMERICA,
State of Illinois, Office of Secretary, ss:

I, Henry D. Dement, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of, 1st, an act to incorporate the Madison County Ferry Company, approved February 3, 1840; 2nd, an act to amend an act entitled "An act to incorporate the Madison Ferry Company, approved February 11th, 1847;" 3d, an act to amend the charter of the Madison County Ferry Company, *3d, an act to amend the charter of the Madison County Ferry Company*, approved February 20th, 1857, the originals of which are now on file in this office.

In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this 2d day of February, A. D. 1882.

[SEAL.] HENRY D. DEMENT,
Secretary of State.

59 *Act to incorporate Wiggins Ferry Company.*

Originated in the senate.

R. E. GOODELL,
Secretary.

An act to incorporate the Wiggins Ferry Company.

Whereas by an act of the legislature, approved on the second day of March, 1819, entitled "An act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi," the State of Illinois granted to Samuel Wiggins, his heirs and assigns, the right to establish a ferry on the waters of the Mississippi near the town of Illinois, in this State, and to run the same from lands at the said place that might belong to him; provided that he should not use any boat or water craft except such as should be propelled by steam, horses, oxen, or other four-footed animals; and provided that said Samuel Wiggins, his heirs or assigns, should have the said ferry in actual operation within eighteen months from and after the passage of that act; and that no person except those who then had ferries established at that place should establish any ferry of the description aforesaid within one mile of the ferry established under that act; and if any person should, contrary to the provisions of that act, run any boat or boats of the description aforesaid, he, she, or they should forfeit any such boat, with the furniture and apparel, to the said Samuel Wiggins, his heirs and assigns, which might be attached and recovered before any court in this State having competent jurisdiction; and it was thereby further provided and enacted that it should and might be lawful for the said Samuel Wiggins, his heirs and assigns, to demand and receive the same rates of ferriage as were then of right demandable at the ferry estab-

lished nearest to the ferry authorized to be established by that act; provided that no more should be charged for a wagon, cart, or other carriage, if loaded, than could be charged if empty; and it was further thereby enacted that the ferry thereby established should be subject to the same taxes as were then, or thereafter might be, imposed on other ferries within this State, and subject to the same regulations and forfeitures. And by another act, approved the sixth day of February, 1821, said Samuel Wiggins, his heirs and assigns, were authorized to remove said ferry on any land which might belong to him or them on said Mississippi River, under the same privileges as were then prescribed by the act first above mentioned; and by another act, entitled "An act to amend the several acts therein named relative to the several acts concerning the establishing and regulating ferries in this State," it was provided as follows:

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that so much of an act entitled "An act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi," approved March 2, 1819, as prohibits the establishing of a ferry within one mile of the ferry established by that act, and so much of the act entitled "An act to authorize Samuel Wiggins to make a turnpike road, and for other purposes," approved February 6, 1821, as authorizes the said Wiggins to remove his ferry to any lands belonging to him, under the same privileges that were conferred to him by the act entitled "An act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi River," approved March 2, 1819, as relates to the prohibiting the establishing any ferry or the running boats within one mile of the ferry established by said last-mentioned act, and so much of the act entitled "An act to amend an act to provide for the establishment of ferries, toll-bridges, and turnpike roads," approved February 12, 1827, amended January 22, 1829, as prohibits the establishing of any ferry on the waters of the Mississippi, Ohio, Illinois, or Great Wabash rivers, within two miles of any such established ferry or toll-bridge, be, and the same is hereby, repealed," approved January 19, 1833; and whereas the said Samuel Wiggins did acquire lands on the Mississippi River and establish a ferry in accordance with the provisions of said acts, and afterwards sold out his said lands and ferry franchise to other persons who, and their representatives also, bought other lands and also leased other lands near the first; and whereas, by means of assignments of various interests in said lands and ferry franchise and of the death of some of the owners of undivided portions thereof, and of the dissent and devises of their interests therein, a number of persons, some of whom are minors, have become owners of said lands, ferry franchise; and whereas it has become desirable that the said lands and ferry landing may be improved by the building of wharves, dykes, and levees, the laying out of streets and roads through a part of said lands, and the erection of houses for various purposes thereon, and the establishment of a boat yard and building of docks, and by other things of public utility, yet, by reason of the minority of some of the present owners thereof and of the uncertainty of life where so many are concerned, the present owners of said lands and ferry franchises cannot do these things and works, therefore to remove their disability, and because the object desired cannot be attained under the general corporation law:

SECTION 1. Be it enacted by the people of the State of Illinois represented in the general assembly, as follows: That Andrew Christy, Wm. C. Wiggins, Adam L. Mills, Louis V. Bogy, and Napoleon B. Mullekin, and their associates, successors, and assigns are hereby created a body corporate and politic, by the name and style of "The Wiggins Ferry Company," and by that name shall have perpetual succession, and may sue and be sued, plead and be impleaded, defend and be defended in all courts and places, and may have and use a common seal, and the same renew and alter at pleasure; and the said company shall have full power to do the following acts: 1st. To acquire by purchase or otherwise and hold any lands or any interest in lands, in fee-simple, or less estate in the counties of St. Clair and Madison, or either of them, and on or near the Mississippi River, and not exceeding twelve hundred acres, and also other lands further from the Mississippi River, for coal mines, not exceeding three hundred acres; and also to purchase, hold, use, and enjoy the ferry franchise heretofore granted to Samuel Wiggins, his heirs and assigns, by the acts referred to in the preamble to this act. 2d. To construct a levee and other works calculated to improve the harbor and ferry landing, to construct a wharf on the Mississippi River, and grade and pave the same, on any part or all of said lands fronting on said river, and after the same shall be graded and paved, shall have the right to charge, collect, and receive wharfage at such rates as may from time to time be fixed by the by-laws of said company, not exceeding the rates of wharfage charged in St. Louis, Missouri, on boats, vessels, and rafts landing or lying at such wharf. 3d. To build and keep one or more wharf boats, to erect warehouses, stores, and such other buildings as may be determined upon by said company, and to establish a boat-yard and erect all necessary shops connected with boat building, and build and finish in all parts ferry and other boats, and to work the coal mines said company may hereafter purchase. 4th. To survey and lay off said lands, or any part thereof, into blocks, lots, streets, and alleys, and grade and pave said streets and alleys, or any part thereof, and to lay off and dedicate to public use grounds for market places, schools, churches, and parks, and to sell, lease, and donate any part of said land in such manner and upon such terms as said company may deem proper, and execute conveyances for the same, and to subscribe for, take, and buy, and hold, and sell stock in any railroad or plank or turnpike road company, and issue bonds bearing such rate of interest and payable at such times and places as the company may think proper, not exceeding one hundred thousand dollars. 5th. To keep a ferry or ferries at and from any point or points on said lands across the Mississippi River to St. Louis, in the State of Missouri, and to remove the same from place to place on said lands as necessity or convenience may require, and use boats or other crafts propelled by steam, heat, or other power, and possess, use, and enjoy all the rights, privileges, franchises, and emoluments recited in the preamble of this act as having been heretofore granted to the said Samuel Wiggins, his heirs and assigns, on and from the lands to be purchased as herein provided for, and generally to do and perform all things in reference to the ownership, control, management, use, and disposition of said ferry franchise, ferry, and lands, and of the business carried on thereat, which a natural person might or could do.

SEC. 2. The capital stock of said company shall consist of one hundred thousand dollars, divided into shares of one hundred dollars each, and may be increased to one million dollars. The immediate government and direction of said company shall be vested in five directors, and the persons hereby incorporated shall constitute the first board of directors, and they shall distribute the stock in said company in such amounts to each as may be agreed among themselves, and shall prescribe the mode of transferring stock, and then cause an election to be held for directors, not less than ten days thereafter, and each stockholder shall be entitled to one vote for each share of stock held by him or them in said company, and may vote by person or by proxy, and the directors so elected shall hold their offices for one year, and until their successors are elected and organized by the election of a president, and in like manner annual elections of directors shall be held; and said directors, a majority of whom
61 shall constitute a quorum to do business, shall elect one of their number to be the president of said company, and shall have power to elect a secretary and treasurer, and appoint such clerks, agents, and servants as may be required to carry on the business of said company in all its various branches.

SEC. 3. The time of holding annual elections for directors shall be fixed by the by-laws to be passed by the directors; but a failure to hold an election at the time appointed shall not operate as a forfeiture of any of the privileges granted by this charter; but in such case the president and directors in office shall continue to exercise their official powers until successors shall be elected and organized; and in case of any vacancy in said board, by death or otherwise, the remaining directors shall fill said vacancy till the next election.

SEC. 4. The directors of said company shall have power to pass by-laws defining the duties and powers of the president, secretary, and treasurer, and of all employés of said company, and also prescribing or changing the manner of transferring stock and the manner of appointing proxies, and such other by-laws as they may deem expedient for the general management of their affairs, not inconsistent with this charter and the laws of the State.

SEC. 5. All conveyances of land sold, leased, or donated by said company shall be executed by the president in his official capacity, in pursuance of an order of the board of directors and by affixing the seal of the corporation and attested by the secretary.

SEC. 6. The courts of chancery or of probate in this State having care or jurisdiction of the estate of any minor interested in said ferry franchise granted to said Samuel Wiggins, his heirs and assigns as aforesaid, and the ferry carried on under that franchise and the lands acquired by the said Samuel Wiggins, and by his assigns and their representatives, as recited in the preamble to this act, may, if in its judgment it is for the interest of said minor, on application of the guardian of said minor, appoint' in the State where said minor resides, notice having been given by publication in a newspaper published in the county where said application is made for four weeks successively before such application, order his or her interest in said property, including the ferry franchise, ferry-boats, and appurtenances used about said ferry, lands, stock, and property of every kind held by the assignees or representatives of said

Samuel Wiggins to be sold either for money to the highest bidder or to said company for stock in said company, at a rate to be approved by the court.

SEC. 7. This act shall not be construed to interfere with any ferry now established by law, and is hereby declared to be a public act, and shall take effect and be in force from and after its passage; provided, that nothing in this act contained shall be construed to create any private right so as to interfere with the powers of any existing municipal corporation or with the right of the legislature at any time hereafter to create municipal corporations within the limits herein specified and to confer upon said corporations all such powers of police, and also all such powers to open and extend streets, lanes, and alleys, and to improve, manage, and control the same, and also such power to enter upon and condemn lands within the limits aforesaid for public wharves, and to improve, control, and fix the rates of wharfage for the same as may be usually or properly confided to a city corporation under the constitution of Illinois.

SEC. 8. Whenever a town or city shall be laid off and established on said land or on the adjacent and contiguous land, it shall be lawful for the corporate authority of such town or city to own and possess the said wharves and landing on paying to the proprietors thereof hereby incorporated the cost of the same, from and after which time the said wharves and landings shall be dedicated to the use of such town or city, and said town or city shall have the right to establish and charge reasonable wharfage for the use of the same; provided, the same shall not exceed the wharfage dues charged and collected by the city of St. Louis.

SEC. 9. The cost of the said wharves, landings, &c., shall be ascertained by petition filed with the county court of St. Clair County, on notice to any one of the persons named as corporators in this act, of at least five days before presenting the petition; and the said court shall, on presenting said petition, appoint three disinterested persons, who, after being sworn before
62 some judge or justice of the peace faithfully and impartially to examine the premises, shall proceed to estimate the cost of said wharves and landings, and make a written report of the same to the said court, which shall be filed and recorded in said court; and on payment or tender of the amount so assessed and found, the said wharves and landings, and all estates in them, shall be transferred to the said corporation petition as aforesaid; provided, however, that either party may appeal to the circuit court and to the supreme court as in other cases.

SEC. 10. No wharfage shall be allowed to be charged in any case until the said wharf or wharves or landings shall be properly and sufficiently graded and paved; provided, that this act shall not be construed to interfere with any of the powers, privileges, or franchises heretofore granted and contained in an act entitled "An act to incorporate the Madison Ferry Company," approved February 3, 1840, and "An act to amend an act to incorporate the Madison Ferry Company," approved February 11, 1847, or either of them.

JOHN REYNOLDS,
Speaker of the House of Rep's.
G. KOERNER,
Speaker of the Senate.

Approved Feb'y 11th, 1853.

J. A. MATTISON.

UNITED STATES OF AMERICA,
State of Illinois, Office of Secretary, ss:

I, Henry D. Dement, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an act to incorporate The Wiggins Ferry Company, approved February 11th, 1853, the original of which is now on file in this office.

In witness whereof I hereto set my hand and affix the great seal of state, at the city of Springfield, this 2nd day of February, A. D. 1882.

[SEAL.] HENRY D. DEMENT,
Secretary of State.

63 *Act to facilitate travel & transportation.*

Originated in the house of representatives.

S. G. PADDOCK, *Clerk.*

An act to facilitate travel and transportation.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the general assembly, that railroads terminating or to terminate at any point on any line of continuous railroad thoroughfare where there now is, or shall be, a railroad bridge for crossing of passengers and freight in cars over the same, as part of such thoroughfares shall make convenient connections of such railroads, by rail, with the rail of such bridge; and such bridge shall permit and cause such connections of the rail of the same with the rail of such railroads, so that by reason of such railroads and bridge there shall be uninterrupted communication over such railroads and bridge as public thoroughfares. But by such connections no corporal rights shall be impaired.

§ 2. This act shall take effect from its passage.

F. CORWIN,
Speaker of the House of Representatives.
WM. BROSS,
Speaker of the Senate.

Approved Feb. 25, 1867.

R. J. OGLESBY.

64 UNITED STATES OF AMERICA,
State of Illinois, office of Secretary, ss:

I, Henry D. Dement, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an act to facilitate travel and transportation, approved February 25th, 1867, the original of which is now on file in this office.

In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this 2nd day of February, A. D. 1882.

[SEAL.] HENRY D. DEMENT,
Secretary of State.

Bond for removal.

Know all men by these presents, that the Chicago and Alton Railroad Company, as principal, and Chester H. Krum, as surety, are held and firmly bound unto the Wiggins Ferry Company in the penal sum of five hundred dollars, the payment whereof well and truly to be made unto the

said The Wiggins Ferry Company, its successors and assigns, we
65 bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: the said Chicago and Alton Railroad Company having petitioned the circuit court of the city of St. Louis, State of Missouri, for the removal of a certain cause therein pending, wherein the said The Wiggins Ferry Company is plaintiff, and the said The Chicago and Alton Railroad Company is defendant, and numbered 57211, to the circuit court of the United States in and for the eastern district of Missouri:

Now, if the said The Chicago and Alton Railroad Company, your petitioner, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

In witness whereof the said Chicago and Alton Railroad Company has caused its corporate seal to be affixed to these presents, attested by its secretary, and the same to be subscribed by its president, and the said surety has hereunto set his hand and seal, on this 3d day of February, A. D. 1882.

66 [CORPORATE SEAL.] THE CHICAGO & ALTON R. R. CO.,
By T. B. BLACKSTONE, *President.*
CHESTER H. KRUM. [SEAL.]

Attest:
C. H. FOSTER, *Secretary.*

Approved in open court this 4th day of April, A. D. 1882.
Attest:
CHAS. F. VOGEL, *Clk.*

STATE OF MISSOURI,
City of St. Louis, ss:

I, Charles F. Vogel, clerk of the circuit court, city of St. Louis, certify the foregoing to be a true, full, and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in the city of St. Louis, this 10th day of March, A. D. 1882.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

67 Which said motion to remand is in words and figures following, to wit:

In the circuit court of the United States for the eastern district of Missouri.

WIGGINS FERRY COMPANY, PLAINTIFF,
against
THE CHICAGO & ALTON RAILROAD COMPANY, defendant. } No. 1999.

And now comes the Wiggins Ferry Company, the plaintiffs in said suit,

and moves the said circuit court of the United States to remand said cause to the circuit court in the city of St. Louis and State of Missouri, being the court from whence said cause was removed to this court, for the following reasons:

First. Because there is no law of the United States authorizing such removal.

Second. Because the facts alleged in defendant's petition for removal show that no power existed to remove said cause into this court.

Third. Because it is nowhere shown or averred that defendant is a corporation organized under a law of the United States.

68 Fourth. Because the answer of the defendant to the petition in said suit and the pleadings therein show no defense to said suit arising under or by virtue of the Constitution or of any treaty or law of the United States.

GLOVER & SHEPLEY,
Att'ys for Pl'ff.

And afterwards, to wit, on the 24th day of March, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

Record.

WIGGINS FERRY COMPANY, PLAINTIFF,
vs.
CHICAGO AND ALTON RAILROAD COMPANY, defendant. } 1999.

Now come the parties by their attorneys, and the plaintiff's motion to remand this cause to the St. Louis circuit court is argued and submitted.

And afterwards, to wit, on the 4th day of April, A. D. 1882, the following further proceedings were had and appear of record
69 in said cause, to wit:

Order remanding.

WIGGINS FERRY COMPANY
vs.
CHICAGO & ALTON R. R. CO. } 1999.

The motion of plaintiff to remand this cause to the St. Louis circuit court having been heretofore submitted, and the court having fully considered the same, it is ordered that said motion be sustained and said cause be, and it is hereby, remanded to said court.

And afterwards, to wit, on the 13th day of April, A. D. 1882, the following proceedings were had and appear of record in said cause, to wit:

WIGGINS FERRY COMPANY, PLAINTIFF,
vs.
CHICAGO AND ALTON RAILROAD COMPANY, defendant. } 1999.

Now comes the defendant, by attorney, and presents to the court its bill

of exceptions, which is allowed, signed, and ordered to be filed and
70 made part of the record herein. Said defendant also presents to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said plaintiff to be and appear at a Supreme Court of the United States, at the next term thereof, on the second Monday of October next, which said writ of error is allowed and said citation signed by the judge.

And the said defendant thereupon presents to the court its bond in the penal sum of five hundred dollars, which bond is approved and ordered to be filed.

Which said bill of exceptions is in words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States for the eastern district of Missouri. March term, 1882.

THE WIGGINS FERRY COMPANY, PLAINTIFF,
vs.
THE CHICAGO AND ALTON R. R. CO., DEFENDANT. } No. 1999.

Be it remembered that heretofore, to wit, on the 20th day of March,
71 1882, at the term aforesaid, the plaintiff filed its motion to remand the said cause, in words and figures as follows:

In the circuit court of the United States for the eastern district of Missouri.

WIGGINS FERRY COMPANY, PLAINTIFF,
against
THE CHICAGO & ALTON RAILROAD COMPANY, defendant. } No. 1999.

And now comes the Wiggins Ferry Company, the plaintiffs in said suit, and moves the said circuit court of the United States to remand said cause to the circuit court, in the city of St. Louis and State of Missouri, being the court from whence said cause was removed to this court, for the following reasons:

First. Because there is no law of the United States authorizing such removals.

Second. Because the facts alleged in defendant's petition for removal show that no power existed to remove said cause into this court.

Third. Because it is nowhere shown or averred that defendant is a corporation organized under a law of the United States.

Fourth. Because the answer of the defendant to the petition in
72 said suit and the pleadings therein show no defence to said suit arising under or by virtue of the Constitution or of any treaty or law of the United States.

GLOVER & SHEPLEY,
Att'ys for Pl'ff.

Which said motion coming on to be heard was by the court sustained,

and the said cause ordered to be remanded to the circuit court of the city of St. Louis, to which action of the court the defendant duly excepted. And in order that such action may accrue of record in said cause, the defendant tenders this bill of exceptions, which is accordingly signed and filed herein.

SAMUEL TREAT, *Judge.*

Which said bond is in words and figures following, to wit:

73 *Bond.*

Know all men by these presents that we, the Chicago and Alton Railroad Company, a corporation organized under laws of the State of Missouri, as principal, and John J. Mitchell, of city of St. Louis, State of Missouri, as surety, are held and firmly bound unto the Wiggins Ferry Company, a corporation organized under laws of the State of Illinois, in the penal sum of five hundred dollars, lawful money of the United States of America, for the payment of which, well and truly to be made, we, the said obligors, bind ourselves and our respective successors, heirs, and administrators, jointly and severally, firmly by these presents.

In witness whereof the said Chicago and Alton Railroad Company has caused its corporate seal to be affixed hereto, attested by its secretary, and these presents to be subscribed by the president of said company, and the said president has subscribed his name and affixed his seal hereunto on this the 13th day of April, A. D. 1882.

The condition of the above obligation is such that whereas lately, at the March term of the circuit court of the United States for the eastern district of Missouri, to wit, on the fourth day of April, A. D.
74 1882, in a suit depending in said court between the said Wiggins Ferry Company, as plaintiff, and the said Chicago and Alton Railroad Company, as defendant, judgment was rendered against the said Chicago and Alton Railroad Company, remanding the said cause to the circuit court of the city of St. Louis, in the State of Missouri, from which the same had been removed into said circuit court of the United States for the eastern district of Missouri, and the said Chicago and Alton Railroad Company having prayed for and obtained an appeal to the Supreme Court of the United States from said order remanding said cause:

Now, therefore, if the said Chicago and Alton Railroad Company shall prosecute said appeal to effect, and answer all damages and costs if it fail to make said appeal good, then the above obligation to be void; else to remain in full force and effect.

{ SEAL OF C. & A. R. R. CO. } THE CHICAGO & ALTON R. R. CO.,
By T. B. BLACKSTONE, *Pres't.*
JOHN J. MITCHELL. [SEAL.]

Attest:
C. H. FOSTER, *Secretary.*

Approved.

SAMUEL TREAT, *Judge.*

75 OPINION.

On the hearing of said cause on the motion to remand, the following opinion was delivered by the United States circuit court, to wit:

Opinion.

WIGGINS FERRY CO.
vs.
CHICAGO AND ALTON RAILROAD CO. } Before McCrary and Treat, JJ.

Motion to remand to the State court from which the suit was removed.

Per curiam:

The plaintiff and defendant are respectively Illinois corporations, and hence, on the ground of citizenship, the case is not removable. It is contended, however, that as plaintiff pleads by way of estoppel the determination by the Missouri courts of the main questions in controversy, which it is contended is different from the decisions of the Illinois supreme court concerning the powers and duties of the corporate parties herein, a federal question is presented within the meaning of the federal statutes.

Ordinarily, the federal courts follow the decisions of the State courts in the construction of their constitution and statutes; but when State courts, not observing such comity, put different constructions upon a contract between local corporations, does that fact make the case one resting upon federal law? It is said the Missouri supreme court has not given "full faith and credit" to the Illinois constitution, statutes, and decisions, and consequently the suit in question involves in limine the federal question as to the faith and credit to be given to Illinois decisions, etc. If the point is well taken, all conflicts of decisions as to contracts within different jurisdictions can be drawn into federal courts. It does not follow that when State courts differ, as suggested, a federal question becomes the main one in the suit, whereby the federal court is to oust a State court from its jurisdiction, and proceed to determine authoritatively which of the respective decisions is correct.

It is true that federal courts follow the interpretation by courts of last resort of the respective States of their constitutions, and generally of their statutes and of contracts made thereunder. It is contended in this case that the supreme court of Missouri did not follow that rule, and therefore "full faith and credit" not having been given in Missouri "to the public acts, records, and judicial proceedings" of the State of Illinois, there is ground for removal, because the case is one "arising under the Constitution and laws of the United States." The case itself was not founded on the Constitution or laws of the United States, nor is it essential to the decision thereof that the United States Constitution or laws should be primarily determined. In the light of the many federal decisions on the question, this case is not one within the purview of federal jurisdiction, when the point stated as to the difference between the Missouri and Illinois courts brings it within the rule as to removals.

It is admitted, apparently at least, that the sole ground of removal rests upon the alleged differences of opinion between the two State courts; but that difference does not, in the opinion of this court, bring the case within the rules governing removals.

76 Counsel for defendant have, we think, mistaken the meaning of the constitutional provision upon which they rely. It is a provision which relates only to the validity and effect of a judgment rendered in one court when proved in another. The colonies had been deemed foreign to each other, and the general rule of the common law, recognized both in England and America, was that foreign judgments were only prima facie evidence of the rights which they purported to have settled. The framers of the Constitution may have apprehended that for many purposes the States of the Union about to be formed might be held to be foreign to each other. There was reason to fear that if left to themselves the States, or some of them, might assert the right to inquire into the merits of controversies once settled by judgments in the courts of sister States. The evils which would have resulted from a general system of re-examination of the judicial proceedings of other States are apparent, and for reasons such as these, says Judge Story, the framers of the Constitution "intended to give not only faith and credit to the public acts, records, and judicial proceedings of each of the States, such as belonged to those of all foreign nations and tribunals, but to give to them full faith and credit—that is, to attribute to them positive and absolute verity, so that they cannot be contradicted or the truth of them denied any more than in the State where they originated." (2 Story on the Constitution, third edition, section 1310.) This, however, is the full scope of the constitutional provision. It relates only to the conclusiveness of such judgments between the parties to them and their privies. It does not require that the judgments in one State should be followed by the courts of other States as matter of authority in other similar cases. The Constitution does not deal with the question of the effect of such judgments as precedents, nor with the opinions of the courts rendering them. It does not require the courts of one State to follow those of another upon any question, whether upon the construction of local statutes, or otherwise. There may, it is true, be cases in which a State law or decision has entered into and become a part of a contract in such a way as that a change of law or a reversal of the decision would impair its obligation, but in those cases the federal question would arise under a different provision of the Constitution. The duty of the courts of one State to follow those of another upon questions arising upon the construction of the statutes of the latter is a duty resting alone upon comity and not one imposed by the federal Constitution.

These are the views of this court, but the points presented are new and important and call for authoritative determination. The motion to remand is therefore sustained, and the defendant may take an exception.

GLOVER & SHEPLEY, *For Plaintiffs.*
C. BECKWITH AND C. H. KRUM,
For Defendant.

77 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in case No. 1999, of The Wiggins Ferry Company, plaintiff, against The Chicago and

Alton Railroad Company, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court at office, in the city of St. Louis, in said district, this ninth day of May, in the year of our Lord eighteen hundred and eighty-two.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SEELEY,
Deputy.

(Indorsed:) No. 1999. United States circuit court, eastern district of Missouri. Wiggins Ferry Co. against C. & A. R. R. Co. Duly certified transcript of record & proceedings in the above-entitled cause.

(Indorsement on cover:) No. 839. The Chicago and Alton Railroad Company, vs. The Wiggins Ferry Company. E. Missouri, C. C. U. S. Filed 13th May, 1882.

OFFICE SUPREME COURT U. S.
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JAMES H. McKENNEY, CLERK

108-18

IN THE

SUPREME COURT of the UNITED STATES.

THE CHICAGO AND ALTON RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE WIGGINS FERRY COMPANY,
Defendant in Error.

Nos. 838 & 839.

Brief of C. Beckwith, for Plaintiff in Error.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

IN THE

SUPREME COURT OF THE UNITED STATES.

THE CHICAGO AND ALTON RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE WIGGINS FERRY COMPANY,
Defendant in Error.

Nos. 838 & 839.

Brief of C. Beckwith, for Plaintiff in Error.

The statement of the cases in the brief of my associate, Judge Krum, is so full and complete that no addition thereto is required.

The more important question presented for consideration relates to the right of the plaintiff in error to remove the cases from the Circuit court of St. Louis, Missouri, to the Circuit court of the United States for the Eastern District of that State. The right of removal was claimed under the act of March 3, 1875, authorizing the same in suits of a civil nature, at law or in equity, arising under the constitution of the United States, where the matter in dispute exceeds, exclusive of costs, the sum of $500. In each of the cases, the matter in dispute exceeded, exclusive of costs, the sum or value mentioned.

In *Railroad Company* v. *Mississippi*, 102 U. S., 135, it was held that a suit might arise under the constitution of the United States, where the defendant invoked the aid of any of its provisions as a defense, as well as where the plaintiff asserted any such provision to enable him to maintain a suit.

In that case the court say:

"A case at law or in equity, consists of the right of one "party as well as of the other, and may properly be "said to arise under the constitution or the laws of the "United States, whenever its correct decision depends "upon the construction of either; that cases arising under "the laws of the United States are such as grow out of "the legislation of congress, whether they constitute the "right or privilege or claim or protection or defense of "the party, in whole or in part, by whom they are as- "serted. That except in the cases in which this court is "given by the constitution original jurisdiction, the judi- "cial power of the United States is to be exercised in its "original or appellate form, or both, as the wisdom of "Congress may direct. And that it is not sufficient to "exclude the judicial power of the United States from a "particular case, that it involves questions which do not "at all depend upon the constitution or laws of the United "States. But when a question, to which the judicial "power of the nation is extended by the constitution, "forms an ingredient in the original cause, it is within the "power of Congress to give the Circuit courts jurisdic- "tion of that cause, although other questions of fact or of "law involved in it."

Considering the important and delicate nature of the questions involved, the court carefully confined itself to the language employed in the decision of previous cases in its expression of a rule applicable to the case before it. The care observed in this respect will be recognized by reading the Commentaries of Mr. Justice Story on the Constitution, § 1642 *et seq.*

In the cases under consideration, the plaintiff in error invoked the protection of the constitution of the United

States against the claim or demand of the defendant in error, and if from the records it appears that such facts were presented as to require the consideration and judgment of this court, whether the plaintiff in error was, or was not, entitled to such protection, the present motions cannot be allowed.

The plaintiff in error sets forth in its petitions for removal of the causes that it was a corporation created by and organized under laws of the State of Illinois, authorizing it to transport persons and property to and from St. Louis, Missouri. The legislative acts by which the plaintiff in error was incorporated, and under which it was organized, are set forth *in hæc verba*, and are expressly declared to be public acts. Although it was not necessary to set forth such acts with particularity, as all federal courts are required to take judicial notice thereof, still, for convenience, it was done.

It will be readily conceded that the interpretation of such acts is as much a part thereof as if such interpretation, by express language, was incorported therein. It must be further conceded that this court is required to take judicial notice of the public acts of the State of Illinois, and of the interpretation by its courts of such acts, in the same manner and to the same extent as if such interpretation formed a part of the acts themselves.

The plaintiff in error asserted that by such public acts as interpreted by the courts of Illinois, of which the Circuit courts of the United States were required to take judicial notice, it was not allowed to surrender, and was prohibited from surrendering its power to transfer persons and property to and from St. Louis, Missouri, or to employ others so to do, as the exigencies and convenience of the public might require, and that it was not allowed to

make, and was prohibited from entering into any contract undertaking perpetually to employ any person or persons, and particularly the defendant in error, to transport persons and property to and from St. Louis, Missouri, to the exclusion of any other person or persons, company or companies transporting persons and property between said places or offering so to do.

And that, by the public laws of the State of Illinois, it was required to make such arrangements as the public exigencies and convenience might require, to transport persons and property across the Mississippi river, with all companies or persons authorized by the legislature of that state to perform such services; and at any and all places where the exigencies and convenience of the public might so require; and particularly, that by a public act of that state, approved February 25, 1867, it was provided that railroads terminating at or to terminate at any point, on any line of continuous railroad thoroughfare where there then was or should be a railroad bridge for the crossing of passengers and freight in cars over the same, as a part of such thoroughfare, should make convenient connection of such railroad by rail with the rail of such bridge, and such bridge should permit and cause said connections with the rail of such railroads, so that by reason of such railroad and bridge there should be uninterrupted communication over such railroad and bridge as public thoroughfares.

The plaintiff in error insists upon its right to have full faith and credit given in the State of Missouri to these public acts of the State of Illinois, as interpreted by its courts.

The question for the consideration of this court is, what are the public acts of the State of Illinois, as interpreted

by its courts, and by what tribunal is such question in the first instance to be determined? Argument is not necessary to show that a federal tribunal, in the cases under consideration, must determine what such public acts are, and the interpretation thereof. Neither this court nor any other federal tribunal can determine whether full faith and credit has been given to such public acts, and the interpretation thereof, until it has first ascertained what such acts so interpreted are. In numerous cases this court has been required to determine whether an act of state legislation impaired the obligation of a contract, and it has been uniformly held that it was its duty to ascertain in the first instance what the contract was, in order to be enabled to determine whether its obligation had been impaired.

Jefferson Branch Bank v. *Skelly*, 1 Black, 436.

In the case of *Railroad Co.* v. *Mississippi*, 102 U. S., 135, Mr. Justice MILLER (dissenting) held that the act of March 3, 1875, did not authorize the removal of cases from a state court to a federal tribunal where the cause of action depended solely on the law of the state, and an act of Congress came in question only incidentally, as a part, a very small part, of the defendant's plea in avoidance; and the learned justice added: "In such a "case, the party was not without remedy in the federal "court, for if he had pleaded and relied upon such defense "in the state court, and that court had decided against him "in regard to it, he could remove the cause into this court "by writ of error, and have the question he had thus "raised decided here." But the majority of the court held that the party insisting upon an act of Congress, as a part of his defense, might remove the cause to the

Circuit court of the United States, and have it tried in the same. It is to be observed that counsel for defendant in error admit that if the court of last resort of the State of Missouri should fail to give full effect and credit to the public acts of the State of Illinois, so interpreted by its courts, that the plaintiff in error might bring its writ of error to that court, and have the error corrected.

In the early history of the United States, the judicial power of the Federal government was carefully scrutinized, but at this day, its power in this respect is unquestioned. By repeated adjudications, conformably to the opinion of all jurists, such power is co-extensive with the provisions of the Constitution. From time to time, differences of opinion have been entertained as to the particular court or courts in which the acknowledged judicial powers of the government are vested, but by a general concensus of opinion, the entire judicial power of the Union is vested in some one or more of them.

Railroad Company v. *Mississippi*, 102 U. S., 135, was an application for a mandamus to compel the company to remove a bridge across Pearl river. The defendant resisted the application upon several grounds, among which were: First, that the bridge had been constructed, and was maintained in accordance with its charter, and conformably to power and authority conferred by statutes of Alabama, Mississippi, and Louisiana; second, authority to construct and maintain the bridge under an act of Congress. As the application for the writ of mandamus was on the part of the state, it was necessary for it to show that the acts of the defendant were in violation of its charter, or of the laws of Alabama, Mississippi, or Louisiana. Until the allegations of the petition for the mandamus were shown to be true, no defense under the

act of Congress was required. These allegations and the introduction of proof to sustain them, necessarily involved a construction of the State laws mentioned, and a decision relative to whether the acts complained of were a violation of such laws. Still, as this portion of the defense might be decided against the defendant, and as in such case, the company relied upon the act of Congress for its protection, the court held that the defendant had a right to remove the cause, for the reason that if the decision should be in favor of the state upon the first ground of defense, the court would be obliged to meet and determine the operation and effect of the act of Congress.

The case, in some respects, is like the cases under consideration. Actions are brought upon a contract, and the defendant in the state court admits its execution in *hæc verba*, but alleges that the construction sought to be given to it by the defendant in error is not the correct one; and that, upon a correct construction of the contract, it has not violated the same. The plaintiff in error also insists that if the construction of the contract sued upon, as claimed by the defendant in error, should be held to be the correct one, then neither party was authorized by the public acts of the State of Illinois, as interpreted by its courts, to enter into any such contract, and both parties were forbidden by such acts to make or observe any contract of that nature.

In the cases under consideration, if the court should find the correct construction of the contract to be as claimed by the defendant in error, and that the plaintiff in error had violated the contract so construed, it would then become necessary for the court to meet and determine the operation of the public acts of the State of Illinois, as interpreted by its courts, upon the contract sued upon.

It may then be considered as established that the plaintiff has a right to the judgment of the Circuit court of the United States for the Eastern District of Missouri, as to what were the public acts of the State of Illinois, as interpreted by its courts, provided the record shows such facts as require consideration of the subject.

It appears from the records that the plaintiff in error insisted that the construction given to the contract sued on by the defendant in error was an erroneous one, and that, under its true legal construction, the same had not been violated. It further appears that the plaintiff in error also insisted that if it should be held that the construction sought to be placed upon the contract by the defendant in error was its proper and legal one, that such a contract was not authorized by the public acts of the State of Illinois, as interpreted by its courts, and was forbidden by such acts, so interpreted. These allegations would have been sufficient to have brought the cases under consideration within the established rule in *Railroad Company* v. *Mississippi*, 102 U. S., 135.

The cases under consideration present, however, another feature by the pleadings. It is alleged that the State of Missouri, by its courts, has conclusively established the law of that State *as between these parties*, so that neither of them are at liberty to assert in any court of the State of Missouri, that full faith and credit is not given to the public acts of the State of Illinois, as interpreted by its courts, although the courts of Missouri assert the construction of the defendant in error of the contract sued upon to be the true legal one, and enforce such construction notwithstanding such construction, and the enforcement thereof, is in contravention of and not allowed by public acts of

Illinois, and the settled laws of that state. The plaintiff in error invokes, in aid of its defence, the constitutional provision of the United States requiring full faith and credit to be given to the public acts of the State of Illinois, and the answer is, that the parties are precluded, in the courts of Missouri, from any inquiry relative to the extent and operation of the public acts of the State of Illinois, as interpreted by its courts, upon the contract sued upon. It will be perceived that the Circuit court of the United States for the Eastern District of Missouri, upon trials therein, not only might be required to ascertain the extent and operation of such public acts on the contract sued upon, as in the case of *Railroad Company* v. *Mississippi*, *supra*, but would of necessity be required so to do. The cases could not be tried in that court under the pleadings without making such inquiry, nor without an adjudication as to the effect and operation of such public acts upon the contract.

The argument of the counsel for defendant in this respect is simply a repetition of one often made to this court, under different circumstances. In the case of the *Jefferson Branch Bank* v. *Skelly*, 1 Bl., 436, it was urged that no contract had been violated, for the reason that the state court had decided that no such contract had ever been made. In the Binghamton bridge case, 3 Wall., 51, the same argument was advanced. In the cases under consideration, it is urged that the courts of the United States cannot inquire whether there are any such public acts of the State of Illinois, because the state courts of Missouri have decided the question. Therefore, it is insisted that a federal court cannot determine a question arising under the constitution of the United States, otherwise properly presented for its consideration. Argument that

a federal court may be deprived of its jurisdictional power by a decision of a state tribunal, is not worthy of consideration. It is conceded that some federal tribunal has authority to determine the true construction of the provisions of the constitution of the United States, requiring that full faith and credit should be given in each state to the public acts of every state, and to give force and effect to its judgment in cases properly presented for its consideration.

In *Railroad Company* v. *Mississippi*, 102 U. S., 135, the question was distinctly presented and considered, whether the act of March 3, 1875, invested the Circuit courts of the United States with power to consider and determine cases, in the acknowledged sense of that word, arising under the constitution of the United States, *and it was held in the affirmative.* Such cases are defined by Mr. Justice STORY to be "When some subject touching "the constitution is submitted to the courts by a party "who asserts its rights in the form prescribed by law; in "other words, a cause is a suit at law or in equity, insti- "tuted according to the regular course of judicial pro- "ceedings; and when it involves any question arising "under the constitution, it is within the judicial power "confided to the Union."

The learned jurist further says: "It has sometimes been "suggested that a case, to be within the purview of the "constitution, must be one in which a party comes into "court, and demands something conferred upon him by "the constitution. * * * But this construction is "clearly too narrow. A case at law or in equity, con- "sists of the right of one party as well as of the other; "and may be truly said to arise under the constitution.

"* * * whenever its correct decision depends upon "its construction."

Reference is made to Story on the Constitution, section 1646 *et seq.*, and repetition of what is said by the eminent author, with which the court is familiar, will be excused

The plaintiff in error demands from a federal tribunal consideration of the public acts of the State of Illinois, as interpreted by its courts, and that full force and effect shall be given to such acts, so interpreted, by such tribunal, under peculiar circumstances; that is to say, where the state court is precluded from considering such demand.

The provision of the constitution of the United States requiring full faith and credit to be given in each state to the public acts, records and judicial proceedings of every other state, was not intended to require uniformity of decision by the courts of the several states, relative to questions presented for their consideration. Such provision only requires that the same faith and credit should be given in every state to all acts, legislative, executive, judicial, and ministerial, which constitute its public records, as are given them in the state in which they originated. Courts of the State of Missouri are at liberty to construe and expound the meaning of its public acts, and hear and determine all controversies arising under its laws; but when called upon to give effect to a public act of the State of Illinois, whether legislative, executive, judicial and ministerial, they are required to give to them the same force and effect as are given to such acts in the latter state. The courts of Missouri may be of opinion that the courts of Illinois have erroneously expounded its public acts, but notwithstanding such opinion, the courts of the State of Missouri have a plain duty to perform. As, for example, had the State of Missouri authorized a corporation to

transport persons and property to and from the State of Illinois, the courts of that state might have arrived at a different conclusion as to the operation and effect of such a charter, different from the one to which the courts of Illinois have arrived relative to the construction of the charter of the plaintiff in error in like language. It might be conceded that the conclusion and determination of the courts of Missouri relative to such public law, would be a correct one, but nevertheless, the courts of that state are required, irrespective of their opinion, to give force and effect to the public acts of the State of Illinois, as interpreted by *its* courts.

For reasons unnecessary to enumerate, the welfare of the Union imposes this duty upon the courts of the several states, which they are not at liberty to disregard.

It being conceded that the language of the constitution of the United States authorizing the passage of a statute for the removal of a cause from a state court to a federal court at any stage of its progress, whenever any question is raised requiring the judgment of the judicial power of the Union as to the true meaning of such constitution, or as to its proper enforcement, although other questions of fact or of law may be involved, it necessarily follows that such other questions of fact or of law, are of a secondary nature. By these well established rules, it became the duty of the Circuit court of the United States for the Eastern District of Missouri to ascertain and judicially determine what the public acts of the State of Illinois were, so far as they related to the contract sued upon, and to declare the operation and effect of such laws upon the contract. And it further became the duty of such court to give force and effect to its determination as to the true meaning of such public acts, as interpreted by the courts of the State of Illinois.

An examination of the pleadings and petitions will furnish an answer to the argument that they do not set forth a case authorizing a removal. The public acts, of which the court is required to take judicial notice, are set forth *in hæc verba:* the construction of these acts, of which the court is also required to take like notice, is also set forth. The particular bearing and operation of these acts upon the contract sued upon, is asserted; and the effect and operation of these acts upon the contract sued upon is alleged; and the fact that the effect and operation of these acts are drawn in question in the state court of Missouri, is well pleaded. The further fact, that these acts cannot have their constitutional operation and effect, *as between the parties*, by reason of the law as declared by the State of Missouri, is also alleged. Further comment upon the argument for the defendant in error in this respect is deemed unnecessary.

The question submitted by the motions under consideration is an important one, and will undoubtedly receive deliberate consideration. They clearly involve a construction of the constitution of the United States, and the enforcement of its provisions by the federal tribunals. Although our government was never without judicial authority to interpret its constitution, or power to enforce the same, as interpreted by such authority, still, until the passage of the act of March 3, 1875, the procedure incident to the exercise of such power and authority was attended with delays, which the act mentioned was designed to remove, and such effect should be given thereto as to accomplish the purpose for which it was passed.

C. Beckwith,

Counsel for Plaintiff in Error.

OFFICE SUPREME COURT U.S.
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JAMES H. McKENNEY, Clerk.

108-18

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1882.

THE CHICAGO & ALTON RAILROAD COMPANY, - - *Plaintiff in Error,*

vs.

THE WIGGINS FERRY COMPANY.
Defendant in Error.

Statement and Brief

OF

CHESTER H. KRUM,
Of Counsel for Plaintiff in Error.

LEVISON & BLYTHE STATIONERY CO. PRINT, ST. LOUIS.

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Defendant in Error.

STATEMENT.

Two Records are submitted under the same motion, because the same questions arise upon each of the records.

The defendant in error, which is a corporation created under the laws of the State of Illinois, brought its suits in the Circuit Court, of the City of Saint Louis, against the plaintiff in error, which is also a corporation created under the laws of Illinois.

Cause numbered 838 was brought August 13, 1875;

and cause numbered 839 was brought September 19, 1881.

There was an earlier suit between the same parties on the contract now sued on, which proceeded to final judgment in the Supreme Court of Missouri. By amendment to its petition, in cause 838, the defendant in error pleaded this judgment by way of estoppel against the plaintiff in error. In the original petition, in cause 839, such estoppel was also pleaded.

The material parts of the petition, in cause 839, which will serve to illustrate both records, are as follows:

The Wiggins Ferry Company, plaintiff, states that it is a corporation existing by force of laws of the State of Illinois, exercising its ferry privileges and franchises on the Mississippi River, between the city of St. Louis, in the State of Missouri, and the shore of said river in the State of Illinois, opposite the city of St. Louis, as will appear by several acts of the legislature of Illinois, the first of which was approved February 11, 1853, and the last of which was in force on and after June 13, 1867; that the Alton & St. Louis Railroad Company is a corporation, and was chartered by the legislature of the State of Illinois by an act of the legislature of the State of Illinois, entitled "An act to incorporate the Alton & St. Louis Railroad Company," approved January 4, 1859; that it accepted its said charter, and by virtue thereof had power, authority and franchises, to construct, complete, own and operate a railroad, with double or single track, from Alton to any point opposite the city of St. Louis, Missouri. And the plaintiff states that the said corporations, created and known as the Alton & St. Louis Railroad Company, also had power, authority and franchises to purchase, and did purchase of the Sangamon & Northwest Railroad Company, a corporation existing by the laws of the State of Illinois, so much of the branch of

said railroad of said company as was situated between Alton, in Madison County, in the State of Illinois, and Bloody Island, opposite the city of St. Louis, in the State of Missouri, and to own and to operate the same; and the said Alton & St. Louis Railroad Company had power, authority and franchises to unite its railroad with any other railroad, then or thereafter constructed, upon such terms as should be mutually agreed upon between the companies so connecting, and also had power, authority and franchises to lease its railroad, with benefit of all the rights, privileges and franchises to any other corporation, person or persons; and for the purpose aforesaid, power was possessed by said company to make, execute and deliver all such contracts and instruments of writing as should be necessary for said purposes. And the plaintiff states that said Alton & St. Louis Railroad Company, prior to the twenty-eighth day of April, 1864, and, on that day, was the owner and proprietor of a railroad extending from the city of Alton, in Madison County, in the State of Illinois, to a point on Bloody Island, in said State of Illinois, opposite said city of St. Louis, in the State of Missouri, and was operating and using said railroad according to the privileges and franchises secured by the charter of said last-mentioned corporation. The plaintiff states that the said Chicago & Alton Railroad Company is a corporation, and was chartered by the legislature of the State of Illinois by an act entitled "An act to incorporate the Chicago & Alton Railroad Company," approved February 18, 1861, and said charter was duly accepted, with power, authority and franchises to acquire for themselves and their associates, by purchase, transfer or conveyance, all and singular the railroad and all the property, real and personal, with the corporate rights, franchises, privileges and effects then or theretofore belonging to or owned by or vested in the Alton & Sangamon Railroad Company, afterwards called the Chicago & Mississippi

Railroad Company, and also the Chicago, Alton & St. Louis Railroad Company, and the said Chicago & Alton Railroad Company did acquire the same as authorized; and the said Chicago & Alton Railroad Company, long prior to April 28, 1864, had authority, power and franchises to erect, use and make arrangements for transportation of freight and passengers, carried or to be carried, upon said railroad, to and from St. Louis, in the State of Missouri; and for that purpose to construct, own, and use such boat or boats as should be necessary. That on the twenty-eighth day of April, 1864, a certain contract and articles of agreement were made and delivered by and between the said corporations, to wit, the said Wiggins Ferry Company and the said Alton & St. Louis Railroad Company, whereby, after reciting, among other things, that both said last-mentioned corporations were anxious to secure permanently to themselves, and to their assignees respectively, the objects therein mentioned—that is to say, said Wiggins Ferry Company, to secure the ferrying business between the Illinois and Missouri shores, opposite the city of St. Louis, of all freights and passengers to be carried by said Alton & St. Louis Railroad Company, and also the further sum of $2,500 per annum, to be paid by said Alton & St. Louis Railroad Company to the plaintiff as therein specified, and the said Alton & St. Louis Railroad Company, to secure from plaintiff proper facilities for depot grounds, for the operation and doing the business of their said railroad at its western terminus on the Mississippi River, opposite said city of St. Louis, it was witnessed for the purpose of carrying out the aforementioned objects that said parties had agreed and covenanted with each other as follows: that is to say, the plaintiff, in consideration of the covenants and stipulations of the said Alton & St. Louis Railroad Company, contained in said articles, and to be observed and fulfilled by said railroad company, did give, grant and convey to said Alton & St.

Louis Railroad Company, and its assigns, the right to construct, maintain and use in, through, and over the piece or parcel of ground therein described, all such railroad tracks, depots, warehouses, and other buildings and erections as the said railroad company should find to be necessary or convenient to be constructed, maintained, and used for the purpose of transacting the business of said railroad company, and to keep thereon, without disturbance, all property of every description belonging to, or which might be in the possession, or charge, or custody of said railroad company, and to take upon and over said piece of ground all persons and property, and to use the same in the transaction of the business of said railroad company as it might find necessary or convenient.

Said piece or parcel of ground was situated on what was known as Bloody Island, in the county of St. Clair, in the State of Illinois, opposite to the city of St. Louis, in the State of Missouri.

And in consideration of said covenants the plaintiff, by said articles, did further agree with said Alton & St. Louis Railroad Company to furnish and maintain good and convenient wharf-boats and steam ferry-boats to do with promptness and dispatch all the ferrying required for the transit of passengers and freight coming from or going to said railroad or its assignee therein mentioned over the said river, navigation permitting, except that the plaintiff might abandon the business at any time by giving said railroad company six months' notice of its determination to do so, in which event the right of the said Alton & St. Louis Railroad Company to the possession of said parcel of ground should remain unaffected except as to the payment of said rent of $2,500 per annum, which was to be paid in any event. And in and by said articles it was further agreed by plaintiff with said Alton & St. Louis Railroad Company that the rates of ferriage to be charged on such freight and passengers

should be reasonable; and if at any time said railroad company should be dissatisfied with the rates charged by plaintiff and plaintiff should not be willing to reduce the same, the question at issue should be submitted to the decision of arbitrators, to be appointed as in said articles provided. *And it was further witnessed in and by said articles that, in consideration of the lease aforesaid and the covenants entered into on the part of plaintiff, said Alton & St. Louis Railroad Company, for itself and its assigns, covenanted and agreed with plaintiff that it would always employ the plaintiff to transfer across said river all persons and property which might be taken across said river either way, to or from the Illinois shore, either for the purpose of being transported on said railroad or having been brought to said river (Mississippi) upon said railroad; and said Alton & St. Louis Railroad Company in said articles of agreement covenanted and agreed with the plaintiff that plaintiff and its legal representatives and assigns, owners of said ferry, should have the profits of the transportation of all such passengers, persons, and property taken across said river, either way, by said railroad company. And the said Alton & St. Louis Railroad Company, further, by said articles covenanted and agreed with plaintiff that no other than the plaintiff's ferry should ever at any time be employed (that is to say, used as an instrument by said railroad company or its assigns, as mentioned therein) to cross any passengers or freight coming or going on the said Alton & St. Louis Railroad.* And in and by the said articles of agreement it was further agreed and understood among said parties thereto that the said Alton & St. Louis Railroad Company should have the right to transfer and assign said agreement to the Chicago & Alton Railroad Company aforesaid, in which event all the covenants, stipulations and agreements therein contained should be as binding on the said Chicago & Alton

Railroad Company as the same were on the said Alton & St. Louis Railroad Company. That on the twenty-eighth day of April, 1864, after the execution and delivery of the said articles of agreement and lease, the said Alton & St. Louis Railroad Company, for a valuable consideration, assigned by writing the said articles of agreement and lease to the said Chicago & Alton Railroad Company and their successors and assigns, together with all the right, title, and interest in and to the lands, tenements, and covenants therein mentioned, which the said Alton & St. Louis Railroad Company had by means thereof, subject, nevertheless, to the rents and covenants in said articles of agreement and lease contained.

That by force of powers and franchises possessed by them respectively under the laws of Illinois, said Alton & St. Louis Railroad Company, on the sixteenth day of April, 1864, made, executed, and delivered to the Chicago & Alton Railroad Company a perpetual lease of its railroad, rights of way, tracks, bridges, fences, water station, depots, depot grounds, engines, and structures, and all other properties completed or to be completed, and covenanted with said Chicago & Alton Railroad Company that the same so leased to them forever should be forever used and operated as part of the main line of the said Chicago & Alton Railroad, that by means of the premises the said defendant became and was made lessee and covenantor in the said lease and articles of agreement dated April 28, 1864, in the place and stead of said Alton & St. Louis Railroad Company; that the defendant, ever since April 28, 1864, has constantly admitted itself bound by said articles and lease in the place of said Alton & St. Louis Railroad Company, has not only held and enjoyed the leased property, as assignee, under the lease, but has annually paid, voluntarily, as provided by said lease said sum of $2,500 per annum, down to and including the quarterly installment falling due March 31, 1870; and did also pay, after suit by plaintiff, the said quarterly in-

stallment falling due prior to June 8, 1872; that said defendant paid nothing more on acconnt of said quarterly installments from June 8, 1872, down to August 13, 1875, and for which amounts of rent, with all other breaches of said contract committed between said last-mentioned date, a suit by said plaintiff against said defendant is now pending in this court; that there was due and owing to plaintiff by defendant at the commencement of this suit said quarterly installments of rent falling due between the 13th day of August, eighteen hundred and seventy-five, and the commencement of this suit, and the same still remains wholly unpaid. And the plaintiff saith it has at all times since the execution and delivery of said articles, and the assignment thereof to the defendant of the execution and delivery of said lease to defendant, furnished, maintained, and had in readiness good and convenient wharf-boats and steam ferry-boats for the performance by it of said articles, and has performed on its part the said articles to the satisfaction of said defendant, and has always been ready and willing, navigation permitting, to do with promptness and despatch all the ferrying for the transit across said river of all freight and merchandise, persons and passengers, coming from and going to said defendant's railroad as aforesaid, and has in all things kept and performed all its agreements in said articles. Yet the plaintiff has not had the ferriage of all passengers, persons, property, and freight over said river, as is stipulated for by defendant. The plaintiff states that other persons than plaintiff have been permitted, without the consent and against the will of plaintiff, to do the ferriage of said persons, passengers, property, and freights over said river from the 13th day of August, 1872, to the commencement of this suit. The plaintiff says the defendant has not always employed it, as stipulated, to transport over said river said persons, passengers, property, and freights so coming from and going to said defendant's railroad to be transported

thereon; but that others than plaintiff and than plaintiff's ferry have been so used and employed, and the plaintiff says it has not had the profits of transporting over said river opposite the city of St. Louis, all passengers, persons, property and freights taken across said river, either way, by said railroad company; that the profits of said transportation have been, with consent of defendant, diverted from the plaintiff's ferry for the benefit of other persons than plaintiff, which other persons have been employed at St. Louis aforesaid, on the Illinois shore opposite said city of St. Louis, in the transportation over said river of such passengers, persons, property, and freights on every day since the thirteenth day of August, 1875, to the commencement of this suit, against the will of plaintiff, and contrary to said agreements of defendant. The plaintiff states that it has been deprived as mentioned above, by the conduct of defendant, on each day, from the thirteenth day of August, 1875, down to the commencement of this suit of the ferriage of seven hundred and fifty passengers, and of the hundred and fifty railroad cars coming from and going to said defendant's ferriage of one railroad over said river, for transportation, and having been transported on said railroad to said river opposite said city of St. Louis to cross said river, each of said railroad cars containing more than twenty thousand pounds of freight, and of the ferriage each day of 200 vehicles, containing, on an average, 4,000 pounds each; that the plaintiff was deprived of the ferriage of said passengers and railroad cars and freights in violation of said contract and agreement of the defendant with the plaintiff. The plaintiff states that it has been deprived, as stated above, by the conduct of defendant of the ferriage of other property and freights on each day as named above, namely, locomotives and empty cars, in violation of said defendant's contract, above set forth; and the value to the plaintiff of all said ferriage has amounted to one thousand dollars on each day during the

period above mentioned. The plaintiff says that the ferriage business of persons, property, and freights, coming from and going to defendant's railroad opposite the city of St. Louis, and over said river, has not been secured to plaintiff as stipulated for by defendant in said agreement, and that every stipulation and agreement in said articles contained, for securing to the plaintiff the ferriage business aforesaid over said river, has been broken by defendant, and these breaches of agreement have been made on every day from said 13th of August, 1875, to the commencement of this suit; that the said breaches and each of them was made by the defendant wilfully and in bad faith, and with the intent to divert from plaintiff's ferry the passengers and freights aforesaid which defendant so agreed to secure to plaintiff for ferriage as above mentioned; that after the execution and delivery of said articles of agreement of April 28, 1864, and the assignment thereof to defendant, and after the defendant had entered on the possession of said leased premises, the plaintiff repeatedly requested defendant to comply with said articles of agreement and secure to plaintiff the ferriage of passengers and freights stipulated for, but the defendant refused to comply with said articles; that on the eighth day of June, 1872, the plaintiff commenced a suit against the defendant in the Circuit Court of St. Louis County for breaches of said contract committed prior to that day, in failing to pay to the plaintiff rents, as stipulated to be paid by defendant, and in refusing to secure to plaintiff the ferriage of said passengers and freights, persons and property mentioned in said articles; and the plaintiff's claim in that behalf was set forth substantially as in this petition, for breaches of said agreement prior to June 8, 1872, and the defendant, in answer to the plaintiff's petition in said suit of June 8, 1872, set forth that it never did contract and agree with plaintiff as set forth in plaintiff's petition, and did not become bound, and was not liable as set forth by plaintiff, and was not bound in said articles to furnish

plaintiff either passengers, freights, or cars, as claimed by plaintiff, and averred that it had fully complied with and performed all its obligations and duties under said articles; that said Alton & St. Louis Railroad Company had no power to make said articles of April 28, 1864, and the same was made contrary to law and public policy, and was void; and that defendant was not lessee or covenantor in the place of the Alton & St. Louis Railroad Company. And in the said answer the defendant denied that plaintiff had performed, on its part, the said articles, or been ready or willing to do so, or had the means of doing so, and denied all breaches of said articles so alleged against it; and the plaintiff saith that issues were framed in respect to all said matters of defense then and there set forth, and such proceedings were had in said suit so commenced June 8, 1872; that a verdict was found for the plaintiff on all said issues, and damages were assessed in favor of the plaintiff in that behalf as sustained by plaintiff, on account of the breaches of said contract made by defendant prior to June 8, 1872, to the amount of one hundred and three thousand eight hundred and seventy-nine dollars and thirty-four cents; that judgment was rendered thereon in favor of plaintiff, and said judgment remained in force till paid and satisfied by defendant, with costs.

The answer of the plaintiff in error contains a general denial of the allegations of the petition, together with the following averments:

That the lands mentioned in said articles of agreement were on Bloody Island, opposite to the City of St. Louis; that the then terminus of said railroad was on said Bloody Island, and that the depot grounds mentioned and referred to in said written agreement were by the parties intended to be and were on said Bloody Island and not elsewhere, and that the ferry of plaintiff was then to and from said Bloody Island and not elsewhere, and its then eastern landing was on

Bloody Island, and its business was carried on to and from said Bloody Island; and that by said articles of agreement, the persons, freight and property embraced therein, or intended so to be, were such as should come on or go to said railroad on said Bloody Island, and to or from said lands, terminus depot and depot grounds, and to be crossed to or from the western shore of said island, and such as the Alton and St. Louis Railroad Company should ferry or transport or cause to be ferried or transported across said river in the way and by the mode of transportation then used and provided by the plaintiff; that the mode, and only mode of transportation across said river used, furnished or provided by the plaintiff was its ferry-boats to receive packages, separate pieces or parcels of property which might be brought by cars of said railroad to the said landing of said boats, to be carried to the opposite or Missouri shore of said river or brought to its boats on the Missouri shore to be carrried to the western shore of said island, and from thence to be taken upon the cars of said railroad in and upon said lands and depot grounds, and of persons who might come to or be so brought, and no other mode or means was then used, provided, known to, or contemplated by said parties in said articles, and that said articles of agreement do not require defendant not to transport nor to employ others to do so, persons or property in cars across said river over any bridge or over any other ferry whatever.

That defendant was *not allowed, but, on the contrary thereof, was forbidden by the laws of the State of Illinois from surrendering its power to transport persons and property to and from St. Louis, Missouri, or from employing others to do so, as the agencies and convenience of the public might require.*

That it was not allowed, but *on the contrary thereof, was prohibited from entering into any contract by which it might undertake perpetually to employ any person or*

persons, and particularly the plaintiff, to transport persons and property to and from St. Louis, Missouri, to the exclusion of any other person or persons, company or companies, transporting persons or property between said places, or offering so to do.

That, *by the laws of the State of Illinois, it was required to make arrangements, as the public exigencies and convenience might require, to transport persons and property across the Mississippi River with all companies or persons authorized by the legislature of that State to perform such services, and at any and all places where such exigencies and conveniencies might require; and particularly, by the laws of the State of Illinois,it was and is provided that railroads terminating at, or to terminate at any point on any line of continuous railroad thoroughfare where there now is or shall be a railroad bridge for the crossing of passengers and freight in cars over the same, as a part of such thoroughfare, shall make convenient connections with such railroad by rail with the rail of such bridge, and such bridge shall permit and cause such connections with the rail of such railroads, so that by reason of such railroad and bridge there shall be uninterrupted communication over such railroad and bridge as public thoroughfares.*

On February 4th, 1882, the plaintiff in error filed in the Circuit Court of the City of St. Louis, petitions for removal of the causes to the Circuit Court of the United States. These petitions prevailed, and the order of removal was duly made.

The material portions of these petitions for removal, and which, with the remainder of the Record, present the question upon which reliance is had for Federal jurisdiction, are as follows:

That the matter and amount in dispute in said cause exceeds, exclusive of costs, the sum or value of five hundred dollars.

That said suit is one arising under the Constitution and laws of the United States, in manner following, that is to say, that plaintiff in error is a corporation created by and organized under certain public acts of the General Assembly of the State of Illinois, granting to your petitioner the right to acquire or construct and maintain and operate certain railroads in said State, with other powers, as will more fully appear by copies of said public acts, severally authenticated by having the seal of the State of Illinois affixed thereto, and which are hereto annexed and made a part hereof as fully as if the same were herein set forth at length.

That in and by said public acts of the State of Illinois plaintiff in error, among other things, authorized to acquire or construct and maintain and operate a continuous line of railroad from the city of Chicago, in the State of Illinois, to a point in said State opposite the city of St. Louis, in the State of Missouri, and was by necessary implication and expressly authorized "to take, use, and make arrangements for the transportation of freight and passengers carried, or to be carried, upon said railroad, or otherwise, from Alton to St. Louis, Missouri, and for this purpose to construct, own, and use such boat or boats as might be necessary."

That the Alton and St. Louis Railroad Company, in the plaintiff's petition mentioned, was and is a corporation created by and organized under a public act of the General Assembly of the State of Illinois, granting to said corporation the right to acquire, or construct, maintain, and operate a certain railroad in the State of Illinois, and other powers, a copy of which act, authenticated by having the seal of the State of Illinois, is affixed thereto and made a part hereof, as fully as if the same were herein set forth at length.

That by said last mentioned public act, the said Alton and St. Louis Railroad Company was by necessary implication authorized to transport persons and property across the Mississippi River to and from St.

Louis, Mo., and to employ others so to do as the public exigencies or convenience might require.

That the Joliet and Chicago Railroad Company, in the plaintiff's petition mentioned, was a corporation created by and organized under a public act of the General Assembly of the State of Illinois, granting to said corporation the right to construct, maintain, and operate a railroad from Joliet in said State, to Chicago, in said State, and with other powers, a copy of which act, and an act amendatory thereof, are hereunto annexed and made a part hereof as fully as if the same were herein set forth at length.

That prior to the 28th day of April, A. D. 1864, plaintiff in error had, under the several acts aforesaid, constructed and acquired a continuous line of railroad from Chicago, in the State of Illinois, to the western shore of Bloody Island, in said State, and was then, and ever since has been, and still is, maintaining and operating the same for the transportation of persons and property as the public exigencies and convenience require.

That neither of the aforesaid corporations were by said public acts or any of them, or by any law of the State of Illinois, authorized to enter into any contract or stipulation to refrain from exercising their several powers, or any of them, to transport persons and property across the Mississippi River, to or from St. Louis, Mo., or to employ others so to do in any manner whatever in the judgment of said corporations, respectively, the exigencies or convenience of the public might require, and on the contrary thereof were by the laws of the State of Illinois precluded from doing so.

That prior to the 26th day of April, 1864, the Madison County Ferry Company was, and ever since has been, and still is, a corporation created by and organized under laws of the State of Illinois, granting to said last-mentioned corporation the right to maintain and operate a ferry for the transportation of persons and property

across the Mississippi River between the western shore of the State of Illinois, near Venice, in said State, and the eastern shore of Missouri, at St. Louis, as will more fully appear by a copy of said acts duly authenticated by having the seal of the State of Illinois affixed thereto, and hereunto annexed and made a part hereof, and that prior to the said 28th day of April, 1864, the said Madison County Ferry Company was, and ever since has been, and still is, engaged in the business of transporting persons and property across said river, between said places, as the public exigencies and convenience may require; and that prior to the 1st day of January, 1869, the plaintiff in error had, and ever since has had, and still has, a station at said Venice, the eastern terminus of said ferry, for the accommodation of the public, and to enable persons and property carried or to be carried on said railroad to be crossed over said river at said place and by said ferry.

That prior to the 28th day of April, 1864, the Wiggins Ferry Company was, and ever since has been, and still is, a corporation created by and organized under a public act of the General Assembly of the State of Illinois, granting unto said last mentioned corporation power and authority to maintain and operate a ferry or ferries for the transportation of persons and property across the Mississippi River between the western shore of Bloody Island, in the State of Illinois, and the eastern shore of Missouri at St. Louis. And that prior to the 28th day of April, 1864, the said Wiggins Ferry Company was, and ever since has been, and still is, engaged in the business of transporting persons and property across said river between said places.

That neither of said last-named ferry companies had any power or authority to enter into any contract or stipulation with plaintiff in error requiring it to refrain from exercising its power to transport persons and property over said river, between said places, or to re-

frain from employing either of said companies, or any other person or company lawfully engaged in said business, so to do, and on the contrary thereof were by the laws of the State of Illinois precluded from entering into any such contract or stipulation.

That on the 28th day of April, 1864, the said Wiggins Ferry Company and the Alton and St. Louis Railroad Company made and entered into the agreement of that date for alleged breach of which this suit is brought.

That afterwards, to-wit, on the 28th day of April, 1864, the said Alton and St. Louis Railroad Company, by its deed of that date, sold, assigned, and transferred unto plaintiff in error the said written agreement last mentioned, and all the right, title and interest in and to the lands, tenements, and easements therein described.

That by a public act of the General Assembly of the State of Illinois, approved February 25th, 1867, entitled "An act to facilitate travel and transportation," it was provided "that railroads terminating or to terminate at any point on any line of continuous railroad thoroughfare, where there now is or shall be a railroad bridge for crossing of passengers and freight in cars over the same, as part of such thoroughfare, shall make convenient connections of such railroad, by rail, with the rail of such bridge; and such bridge shall permit and cause such connections of the rail of the same with the rail of such railroads, so that, by reason of such railroads and bridge, there shall be uninterrupted communication over such railroads and bridge as public thoroughfares; and that by such connections no corporate rights shall be impaired."

That on the 21st day of February, 1867, the Illinois and St. Louis Bridge Company was created by and organized under the laws of the States of Illinois and Missouri, granting to said corporation power to construct, maintain and operate a bridge across the Mississippi

River from St. Louis, Missouri, to a point on the western bank of said Bloody Island, in the State of Illinois, and to make all necessary, convenient and proper approaches thereto on either side of said river; and that on or about the 4th day of July, 1874, under and by virtue of said authority, said corporation constructed such bridge, with the said necessary, proper and convenient approaches thereto, and that said bridge and approaches, ever since said time last aforesaid, have been maintained and used, and that the eastern approach to said bridge and terminus thereof is near and in the immediate vicinity of the southern terminus of the railroad of plaintiff in error, on said Bloody Island, in the State of Illinois; that the said bridge referred to is a railroad bridge for crossing of passengers and freight in cars over the same, and that said crossing is and was designed to be part of a continuous railroad thoroughfare between points east and west of said Mississippi River, and said crossing is the safest, most expeditious and economical method and means of crossing said river with freight and passengers; that the rails of the railroad of plaintiff in error have been and are now duly connected with those of said railroad bridge, and that notwithstanding the foregoing provisions of the law and said chartered rights and privileges, and notwithstanding the public duty imposed upon plaintiff in error as a carrier of freight and passengers, to provide and afford the most expeditious, safe and economical methods and means of transportation for the purposes of its business, and the safety, welfare and comfort of passengers and property committed to its care and keeping, defendant in error claims that the contract sued upon imposes upon plaintiff in error the perpetual obligation to employ and use for the transportation and carriage across said river Mississippi, from said Bloody Island to St. Louis, and *vice versa*, of both freight and passengers, only the boats, vessels and means of transportation belonging to and operated by said defendant in error.

That said agreement of April 28th, 1864, and the assignment thereof to your petitioner are, so far as they undertake or purport to impose an obligation upon plaintiff in error to always employ defendant in error to transport across the Mississippi River all persons and property which may be taken across the same, either way, to or from the Illinois shore, either for the purpose of being transported on said railroad or having been brought to the said river Mississippi upon said railroad, so that defendant in error should have the profits of the transportation of all such passengers, persons and property taken across said river, either way, by said railroad company, or that no other than the defendant in error should ever at any time be employed by plaintiff in error to cross any passengers or freight coming or going on said road, are by the public acts and laws of the State of Illinois utterly void and of no effect whatever, and that an observance of any such contract or agreement would be a violation of the said public acts and laws of said State. Nevertheless, the said defendant in error claims in its said petition that heretofore, to-wit, on the 8th day of June, 1872, it commenced a suit in the Circuit Court of the city of St. Louis, Mo., against plaintiff in error, for alleged breaches of said agreement, and that by reason of the adjudication in said suit in said petition mentioned and set forth, plaintiff in error is precluded and estopped from insisting that any such supposed obligation or undertaking on its part would have been in contravention of the laws of the State of Illinois and utterly void and of no effect.

That full faith and credit has not been given to the public acts of the State of Illinois by the Supreme Court of the State of Missouri in the adjudication of the aforesaid, and that by reason of the facts herein set forth and of such adjudication and of the pleading thereof as an estoppel in the manner set forth in plaintiff's petition this suit is one arising under the Constitution and laws of the United States.

The Act of June 19, 1852, (which is pleaded in the application for the orders for removal), among other things provides:

SECTION 3. It shall be lawful for the said company to unite with any other railroad company which may have been, or may hereafter be, incorporated by this State, and to grant to any such company the right to construct and use any portion of the road authorized to be constructed by any of the amendments of the original charter of the Alton and Sangamon Railroad Company, thereto made, or to be made, upon such terms as may be mutually agreed between the said companies; and the said Chicago and Mississippi Railroad Company shall have power to take, use, and make arrangements for the transportation of freight and passengers carried or to be carried upon said railroad, or otherwise, from Alton to St. Louis, Missouri, and for this purpose to construct, own, and use such boat or boats as may be necessary.

The act of February 25, 1867, provides:

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, that railroads terminating or to terminate at any point on any line of continuous railroad thoroughfare where there now is, or shall be, a railroad bridge for crossing of passengers and freight in cars over the same, as part of such thoroughfares shall make convenient connections of such railroads, by rail, with the rail of such bridge; and such bridge shall permit and cause such connections of the rail of the same with the rail of such railroads, so that by reason of such railroads and bridge there shall be uninterrupted communication over such railroads and bridge as public thoroughfares. But by such connections no corporal rights shall be impaired.

At the term of the Circuit Court of the United States to which the orders of removal were returnable, the defendant in error filed motions to remand the causes, on the ground that they were not properly removable from the State Court. These motions having prevailed, the causes came here on writs of error.

The defendant in error now moves to advance the causes under Rule 32, and to affirm the judgments of the Court below, for the following reasons:

Because said causes were properly remanded to the Circuit Court of the city of St. Louis, from whence the same were removed.

Because there was no law of the United States authorizing such removal.

Because the facts alleged in said defendant's petition for removal show that no power existed for the removal of said causes from the State Court.

Because the order of the Circuit Court of the United States for the Eastern District of Missouri remanding said causes to the Circuit Court in the city of St. Louis was properly made.

BRIEF.

I.

There is no provision in the Rules of this Court for the motions made by the defendant in error.

a. Rule 32 provides for an advance of such cases, but the advance is made and heard under the rules applicable to motions to dismiss.

Rules Supreme Court, page 22.

b. The defendant in error does not move to advance the causes and dismiss the writs of error. It moves to advance and affirm the judgments.

c. Rule 6 in relation to motions provides that "there may be united with a motion to dismiss, a writ of error, or appeal, a motion to affirm on the ground that although the record may show that this Court has jurisdiction, it is manifest the appeal or writ was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument."

Rules Supreme Court, page 7.

The Court will observe that the motions now made by the defendant in error do not conform to the provisions of any of the Rules.

A motion to affirm may be united with a motion to dismiss, but a motion to affirm has no provision made for it, except as an adjunct to a motion to dismiss. There is no provision for a motion to affirm alone. Here the defendant in error moves to affirm. It makes no other motion, except that the causes be advanced. It does not move to dismiss on the ground that this Court has no jurisdiction of the writ of error. It does not move to affirm on the ground that even if jurisdiction exist, so that a motion to dismiss cannot be entertained, yet the

writs have been sued out for delay, or present questions so frivolous as to need no further argument. Not only is there no rule covering the procedure asked now by the defendant in error, but the application as made does not conform to the requirements of the rules under which it purports to have been made.

In Hecker *vs.* Fowler, 1 Black 95, this Court have said: "Where judgment appears to have been rendered, which the party is entitled to have revised in this Court, and it is also seen that it comes here for such revision upon proper process duly issued, all other questions must await the final hearing. To say that there is no error in this judgment and affirm it for that reason, would be to decide the whole legal merits of the case, and this we cannot do on a motion to remand, or to quash the writ."

II.

The Record presents a case which arises under the Constitution of the United States.

This Court has held "that a case in law or equity consists of the right of one party as well as of the other, and may, properly, be said to arise under the Constitution or a law of the United States whenever its correct decision depends on the construction of either. . . . That it is not sufficient to exclude the judicial power of the United States from a particular case, that it involves questions which do not at all depend on the Constitution or laws of the United States; but where a question, to which the judicial power of the Union is extended by the Constitution, forms an ingredient of the original cause, it is within the power of Congress to give the Circuit courts jurisdiction of that cause, although other questions of fact or of law may be involved in it."

Railroad Co. *vs.* Mississippi, 102 U. S. 141.

The actions to whose removal the right of the plaintiff in error is disputed, have arisen upon a contract, which was entered into between two corporations, created under the laws of the State of Illinois, and which concerns property located in that State. The engagement of the plaintiff in error is one, which during the continuance of the contract binds it to give to the defendant in error the carriage of passengers, freight and cars, exclusive of all other carriers and all other means of transporting such passengers, freight and cars across the Mississippi river at St. Louis.

"In consideration of the lease aforesaid, and the covenants entered into on the part of the said ferry company, the said railroad company covenants and agrees that they will always employ the said ferry to transport across the said river all persons and property which may be taken across the said river, either way, to or from the Illinois shore, either for the purpose of being

transported on said railroad or having been brought to the said river Mississippi upon said railroad.

"So that the said ferry company, its legal representatives or assigns, owners of the said ferry, shall have the profits of the transportation of all such passengers, persons and property taken across said river, either way, by the said railroad company; and that no other than the Wiggins Ferry shall ever, at any time, be employed by the said party of the second part, or the assignee herein mentioned, to cross any passengers or freight coming or going on said road."

In other words, the plaintiff in error bound itself, that thenceforth, it would be limited to only one method of crossing the Mississippi river at St. Louis; that it would not keep abreast of the times; that it would not respond to the demands and requirements of railroad traffic, and that it would not afford every necessary facility to all persons who might thereafter deal with it as a common carrier.

By proper averments in its answer, the plaintiff in error asserts that such a contract is unlawful and beyond the power of any common carrier. To this defense, the defendant in error pleads by way of estoppel a judgment of the Supreme Court of Missouri, which affirms the validity of the contract.

Here, therefore, are cases in which the contract sued on is alleged by the plaintiff in error to be in violation of its own charter, and of the laws of the State by which such charter was granted. The contract is attacked as *ultra vires* and against the policy of the laws of Illinois. The plaintiff in error disputes the power of any carrier, created under laws such as are before the Court in the petition for removal, to bind itself by any such contract. It was and is in the "exercise of a sort of public office." Its duty is to provide all necessary means for the expedition of business committed to its charge, and to afford all reasonable and necessary facilities for the carriage of freight and passengers. The petition for removal alleges, that the

bridge at St. Louis forms with the road of plaintiff in error a continuous line of transportation across the Mississippi river. It has connected the tracks of its railroad with the track of the bridge, not only in observance of its duty to keep pace with the progress of the times, but under the express requirement of the Act of February 25th, 1867.

The plaintiff in error having undertaken to limit itself to one mode of crossing the river at St. Louis, whatever might be the requirements of railroad transportation and whatever the instructions or the interests of shippers and passengers, brought itself at once within the prohibition of the policy of the State, as expressed not only in the Statute, but in the declarations of its Court of last resort. "Regarded merely as a common carrier at common law, and independently of any obligation imposed by the acceptance of its charter, it," (a railway company), "would owe important duties to the public from which it could not release itself, except with the consent of every person who might call upon it to perform them." * * "The object of the legislature was to add to the means of travel and commerce. If then, a common carrier at common law came under obligations to the public from which he could not discharge himself at his own volition, still less should a railway company be permitted to do so, when it was created for the public benefit and has received from the public such extraordinary privileges." * * "The Courts have always been, and we trust always will be, ready to protect these companies in their chartered rights; but on the other hand, we should be equally ready to insist that they perform faithfully to the public those duties which were the object of their chartered powers."

> Chicago & N. W. R. R. Co. *vs.* People, 56 Ills., 378, 379.
> Peoria & Rock Island R. R. *vs.* Coal Co., 68 Id., 489.
> Thomas *vs.* Railroad Company, 101 U. S. 71.

"The principle, that a railroad company can make no injurious or arbitrary discrimination between individuals in its dealings with the public, not only commends itself

to our reason and sense of justice, but is sustained by adjudged cases."

C. & N-W. R. R. *vs.* People *supra.*

And in this case, which illustrates so clearly the policy of the State of Illinois, speaking of the obligations of the railroad company as a servant of the public, to keep pace with the public needs, the Court say: "Suppose this respondent" (the railroad company), "had asked from the legislature a charter authorizing it to carry grain in bulk, to be delivered only at the elevator of Munn & Scott, and nowhere else in the city of Chicago, can anyone suppose that such charter would have been granted? The supposition is preposterous. But, instead of a charter making a particular elevator the terminus and place of delivery, the Legislature granted one which made the city of Chicago itself the terminus, and when this charter was accepted, there at once arose, on the part of the respondent, the corresponding obligation to deliver grain at any point within the city of Chicago, upon its lines, with suitable accommodations for receiving it, to which such grain might be consigned. Perhaps grain in bulk was not then carried in cars, and elevators may not have been largely introduced, *but the charter was granted to promote the conveniences of commerce, and it is the constant duty of the respondent to adopt its agencies to that end.*"

Such being the laws and policy of the State of Illinois, the plaintiff in error invokes the protection of the Constitution, which requires "full faith and credit" to be given in each State to the public acts of every other State. It maintains that the same effect must be given to its charter and the laws of Illinois in Missouri as is given to them in the State of Illinois. The protection of the Constitution cannot be had, because of the estoppel pleaded by the plaintiff in error.

From the time this estoppel was pleaded a Federal question necessarily became involved.

"It has never been denied, nor is it now, that the Supreme Court of the United States has an appellate power

to reverse the judgment of the Supreme Court of a State, whenever such a Court shall adjudge that not to be a contract which has been alleged, in the forms of legal proceedings, by a litigant, to be one, within the meaning of that clause of the Constitution of the United States which inhibits the States from passing any law impairing the obligation of contracts. Of what use would the appellate power be to the litigant who feels himself aggrieved by some particular State legislation, if this Court could not decide independently of all adjudications by the Supreme Court of the State, whether or not the phraseology of the instrument in controversy was expressive of a contract, and within the protection of the Constitution of the United States, and that its obligation should be enforced, notwithstanding a contrary conclusion by the Supreme Court of the State. It never was intended, and cannot be sustained by any course of reasoning, that this Court should or could, with fidelity to the Constitution of the United States, follow the construction of the Supreme Court of a Sate in such a matter when it entertained a different opinion, and in forming its judgment in such a case, it makes no difference in the obligation of this Court in reversing the judgment of the Supreme Court of a State upon such a contract, whether it be one claiming to be such under the forms of State legislation, or has been made by a covenant or agreement by a State by its authority."

Jefferson Branch Bank *vs.* Shelly, 1 Black. 436.

The petition of the defendant in error alleges that the defendant entered into a contract to forever refrain from exercising its powers to transport persons and property as authorized by its charter and by the laws of Illinois. The plaintiff in error admits the execution of the contract set forth *in hæc verba*, and avers that if such is its true construction in that respect, it was in contravention of its charter and of the laws of Illinois. The charter of plaintiff in error and the laws of Illinois are a part of the record. On the other hand, the Supreme Court of the State of Missouri has declared that the contract sued on is not in contravention of the charter of plaintiff in error, or of the

laws of the State of Illinois. The inquiry then arises as to the tribunal to determine these questions. It is essential that the federal tribunal should in the present cases decide, first, as to the extent of the authority of plaintiff in error, under its charter and the laws of Illinois, and the limitations thereby imposed upon it, and, second, as to the force and effect to be given to the record and proceedings of the Supreme Court of the State of Missouri, and to the claim that an estoppel was thereby created. Upon these motions to remand, the consideration of the Court is limited to the inquiry whether the record presents a federal question to be determined, and is not extended to an inquiry as to how the question should be decided. This Court will take judicial notice of the laws of the State of Illinois. The plaintiff in error alleges that these laws authorize it to transport persons and property to and from the State of Missouri, and that the authority thus conferred was to be exercised from time to time in such manner as the public exigencies should require. The plaintiff in error further alleges that it was never able to bargain away the right to exercise its discretion in this respect, and that its charter and the laws of the State of Illinois restrained it from so doing. The defendant in error alleges that the charter of the plaintiff in error and the laws of Illinois did not restrain such plaintiff from entering into the contract sued upon, and that the record and proceedings of the Supreme Court of Missouri estop the plaintiff in error from so claiming. A federal question is clearly presented, requiring the Court, as before stated, to determine, first, the authority of the plaintiff in error, under its charter and the laws of the State of Illinois, and the limitations thereby imposed upon it, and, second, the extent and effect of the estoppel asserted by the defendant in error.

The record before this Court presents the federal question just as clearly as if the Supreme Court of Missouri had denied to the plaintiff in error the inter-

pretation of its charter now insisted on, and as if a writ of error had been sued out to that Court. The Act of 1875, concerning removals, was intended to avoid circumlocution and unnecessary delays.

In every case where, from the final judgment of the State Court of last resort, a writ of error will lie from this Court to such State Court, an order of removal can be obtained in the trial Court of the State, without waiting for a final determination in the Court of last resort.

Here, in the records before this Court, the federal question arises at once upon the pleading of the estoppel. "Full faith and credit shall be given in each State to the *public acts*, records and judicial proceedings of every other State." What is the meaning of this section of the fourth article of the Constitution? How can a federal question arise under such section? Judgments are to have, in every other State, the conclusive effect which they have in the State of their origin. Concede that the Court which rendered the judgment had jurisdiction, and then it follows, from the mandate of the Constitution, that such judgment shall have the full effect, faith and credit in every other State to which it is entitled under the laws of that State whose Court had pronounced the judgment.

2 Story Const., Sec. 1310.

"Full faith and credit shall be given in each State to the *public acts* of every other State." The language is positive and declaratory, leaving nothing to future legislation. It is established by the Constitution, and is to receive no aid.

2 Story Const., Sec. 1308, 1309.

The charter of the plaintiff in error is before the Court. The construction given to that charter by the Courts of Illinois is before the Court. The scope as well as the limitations of the corporate powers of the plaintiff in error are before the Court. The plaintiff in error,

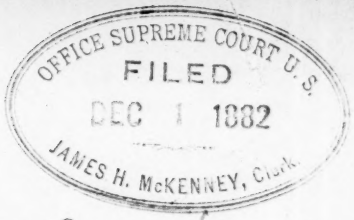
having been sued under a contract whose validity its charter and the "public acts" of Illinois deny, seeks to avail itself, in Missouri, of the protection afforded it by that charter and those "public acts." It says that, by the very grant which gave it corporate existence, it was prohibited from confining itself within the limitations and exclusions of the contract upon which it has thus been sued. It demonstrates that, by the spirit and letter of the "public acts" of Illinois, such a contract is positively forbidden. It relies with confidence upon the solemn declarations of the Court of last resort of Illinois, interpreting corporate powers under similar and like grants of corporate existence. It defends upon the ground that, under the laws of Illinois, no corporation which holds to the public the relation of a common carrier, can lawfully become a party to such a contract. But it is met by the plea, by way of estoppel, that in another action between the same parties, the Supreme Court of Missouri has so determined that the contract is lawful, and one upon which the plaintiff in error could legitimately enter.

The contract is local to Illinois. No questions of merely commercial law are raised under the contract. Upon such questions, the Courts of the various States may all differ. Such difference finds no prohibition in the Constitution. But shall the Courts of Missouri declare a contract local to Illinois to be valid, when the courts of Illinois declare such a contract to be invalid? And, if the party affected by such a contract seeks to defend against Missouri, shall such party be denied that view of the contract which obtains in the State of its origin? Should the plaintiff in error be forbidden by the Courts of Illinois from further performance of such a contract, would the Courts of Missouri be permitted to enforce it against the plaintiff in error upon the ground that thereby they did not in any manner contravene the Constitution of the United States?

I respectfully submit, that the more these questions are elaborated, only the more conclusively appears the propriety of the orders of removal entered in these causes. The cases do arise under the Constitution, and the judgments below should be reversed.

Chester H. Krum

For Plaintiffs in Error



108-16

Supreme Court of the United States.

THE CHICAGO AND ALTON RAILROAD COMPANY,
Plaintiff in Error,

vs.

THE WIGGINS FERRY COMPANY,
Defendant in Error.

No. 838 AND No. 839.

MOTION TO ADVANCE CAUSES UNDER RULE 32 AND TO AFFIRM SAID CAUSES.

GLOVER & SHEPLEY,
For Defendant in Error.

Nixon-Jones Printing Co., Law Printers, 210 and 212 Pine Street, St. Louis.

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Chester H. Krum

J. D. Hoffman

OFFICE SUPREME COURT U. S.
FILED
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JAMES H. McKENNEY, Clerk.

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IN THE

SUPREME COURT OF THE UNITED STATES.

THE CHICAGO AND ALTON RAILROAD COMPANY, *Plaintiff in Error,* *vs.* THE WIGGINS FERRY COMPANY, *Defendant in Error.*	*No. 838* *and* *No. 839.*

The defendant in error has caused copies of the foregoing motions and of the brief of said defendant in support thereof, which is hereto annexed, to be duly served according to the rules of said court, upon Chester H. Krum, Esq., counsel for plaintiff in error, and hereto annexed proof of such service.

GLOVER & SHEPLEY,
For Defendant in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

THE CHICAGO AND ALTON RAILROAD COMPANY, *Plaintiff in Error,* *vs.* THE WIGGINS FERRY COMPANY, *Defendant in Error.*	*No. 838 and No. 839.*

To Counsel of the Plaintiff in Error.

SIR: You will please take notice that on Monday, the 25th day of December, 1882, a motion in said causes to advance said causes and to affirm said causes, copies whereof are hereto annexed and a brief in support of said motion to affirm, a copy of which brief is also hereto annexed, will be presented to the court at the opening session on that day, or as soon thereafter as counsel can be heard, and the said court will be asked to affirm said causes.

Gloucer and Shepley

Counsel for Defendant in Error.

IN THE

CIRCUIT COURT OF THE UNITED STATES.

OCTOBER TERM, 1882.

THE CHICAGO AND ALTON RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE WIGGINS FERRY COMPANY,
Defendant in Error.
} *No. 838.*

And now comes the said Wiggins Ferry Company and moves said court to advance said causes under Rule 32 and to affirm said causes for the following reasons: —

Because said causes were properly remanded to the Circuit Court in the city of St. Louis, from whence the same were removed.

Because there was no law of the United States authorizing such removal.

Because the facts alleged in said defendant's petition for removal show that no power existed for the removal of said causes from the State court.

Because the order of the Circuit Court of the United States for the Eastern District of Missouri remanding said causes to the Circuit Court in the city of St. Louis was properly made.

Glover and Shepley

For Defendant in Error.

IN THE

CIRCUIT COURT OF THE UNITED STATES.

OCTOBER TERM, 1882.

THE CHICAGO AND ALTON RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE WIGGINS FERRY COMPANY,
Defendant in Error.
} *No. 839.*

And now comes the said Wiggins Ferry Company and moves said court to advance said causes under Rule 32 and to affirm said causes for the following reasons: —

Because said causes were properly remanded to the Circuit Court of the city of St. Louis, from whence the same were removed.

Because there was no law of the United States authorizing such removal.

Because the facts alleged in said defendant's petition for removal show that no power existed for the removal of said causes from the State court.

Because the order of the Circuit Court of the United States for the Eastern District of Missouri remanding said causes to the Circuit Court in the city of St. Louis was properly made.

Glover & Shepley

For Defendant in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1882.

THE CHICAGO & ALTON RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE WIGGINS FERRY COMPANY,
Defendant in Error.

Nos. 838 & 839.

STATEMENT AND BRIEF

By GLOVER & SHEPLEY,
For Defendant in Error.

STATEMENT OF THE CASE.

These cases are argued together for the reason that the cases were originally brought by the same plaintiff against the same defendant in the same court and present the same question before this court.

They were each brought by the Wiggins Ferry Company, as a corporation of the State of Illinois and a citizen thereof, against the Chicago & Alton Railroad Company, a corporation of the State of Illinois and a citizen of that State, in the Circuit Court of the City of St. Louis. The case No. 838, was filed on the 13th August, 1875, and the case No. 839, was filed on the 19th September, 1881, by said Wiggins Ferry Company *v.* Chicago & Alton Railroad Company to recover from said railroad company damages for the violation of a contract in writing, dated the 18th April, 1864, made by said Wiggins Ferry Company with the Alton & St. Louis Railroad Company, which contract was made by its terms to be assigned by said Alton & St. Louis Railroad Company to said defendant, and was so assigned to said defendant by said Alton & St. Louis Railroad Company on the day of its date, for good and valuable consideration, subject to the rents and covenants contained in said article of agreement. That said defendant had power and authority and franchises to contract, use, and make arrangements for the transportation of freight and passengers carried, or to be carried, upon said railroad to and from St. Louis, in the State of Missouri and for that purpose to construct, own and use such boat or boats as should be necessary.

That by the said contract so made on the 28th April, 1864, between said Wiggins Ferry Company and said Alton & St. Louis Railroad Company, after reciting that the both said parties were anxious to secure for themselves and their assigns permanently the objects therein mentioned, that is to say, the Wiggins Ferry Company to secure the ferrying business between the Illinois and Missouri shores opposite the city of St. Louis of all freights and passengers to be carried by the Alton & St. Louis Railroad Company, and also the further sum of $2,500 per annum to be paid by said Alton & St. Louis Railroad to the said Ferry Company, as in said articles specified, and the said Alton & St. Louis Railroad Company being anxious to secure from said Ferry Company

proper facilities for depot grounds for the operation and doing of the business of said road at its western terminus on the Mississippi river opposite the City of St. Louis; it was covenanted and agreed between said parties, for the purpose of carrying out the aforementioned objects as follows:— That said Ferry Company, in consideration of the covenants and agreements of the Alton & St. Louis Railroad Company and its assigns, granted to said railroad and its assigns a tract of 1,500 feet from east to west by four hundred feet from north to south, with a right of way northwestwardly (which said land and right of way are specifically described in said instrument), for tracks and said depot purposes so long as the same should be used and employed for the uses and purposes mentioned therein, which lands were of the value of $300,000, and in consideration of said covenants the said Ferry Company did agree to furnish and maintain good and convenient wharf boats and steam ferry boats to do with promptness and dispatch all the ferrying required for the transit of passengers and freight coming from or going to said railroad or its assignees, and in consideration of said lease and these covenants of the ferry company, the said Alton & St. Louis Railroad Company, for itself and its assigns, covenanted, and agreed with said plaintiff that it would always employ said ferry company to transfer across said river all persons and property which might be taken across said river, to or from the Illinois shore either way, either for the purpose of being transported or having been brought to the Mississippi River on said railroad. And said railroad company in said articles covenanted that said ferry company should have the profits of the transportation of all such passengers, persons, and property taken across said river either way, by said company. And said Alton & St. Louis Railroad Company therein covenanted that no other than the plaintiff's ferry should ever at any time be employed, that is to say, used as an instrument by said railroad company or its assigns to

cross any passengers or freight coming or going on the said Alton & St. Louis Railroad, and in said agreement it was expressly provided that the said Alton & St. Louis Railroad Company should have a right to assign said contract to the Chicago & Alton Railroad Company, in which event all the covenants, stipulations, and agreements therein contained should be as binding on the said Chicago & Alton Railroad Company as on the Alton & St. Louis Railroad Company. That this contract bound the ferry company to be always ready to do this ferriage with promptness and dispatch. That to perform its contract the ferry company expended in boats and appliances about $100,000 that as a consideration for this contract the said ferry company conveyed to the railroad company lands of the value of $300,000, that the railroad company has retained this consideration and refused to perform the contract.

In its answer, after admitting the execution of the agreement in writing between the Wiggins Ferry Company and the Alton & St. Louis Railroad Company, and the assignment of the same by the said St. Louis & Alton Railroad to the defendant, the Chicago & Alton Railroad Company, the defendant denies all the statements contained in this petition except as specifically admitted. It sets up that it was not allowed, but on the contrary was forbidden by the laws of the State of Illinois from surrendering its power to transport persons and property to and from St. Louis, Missouri, or from employing others to do so, as the exigencies and convenience of the public might require; that it was not allowed, but prohibited from entering into any contract by which it might undertake perpetually to employ any person or persons, and particularly the plaintiff, to transport persons and property to and from St. Louis, Missouri, to the exclusion of any other person or persons transporting persons or property between said places or offering to do so; that by the laws of Illinois it was required to make arrangements, as the public exigencies and convenience might require, to

transport persons and property across the Mississippi at such places as the exigencies and convenience of the public might require, and particularly, by the laws of the State of Illinois, it was provided, that railroads terminating at any point on any line of continuous railroad thoroughfare, when there is a railroad bridge for the crossing of passengers and freight in cars over the same as a part of such thoroughfare, shall make convenient connection with said railroad by rail with the rail of such bridge, and such bridge shall permit such connection.

Defendant further states that neither the plaintiff, the Alton & St. Louis Railroad Company, nor the defendant, had any right whatever to enter into any contract contravening the laws of the State of Illinois.

To the answer a general denial of the truth of the new matter was filed by plaintiff in each suit on the 30th January, 1882.

On the 4th day of February, 1882, a petition was filed by the defendant in each of said cases in said court for the removal of the cause to the Circuit Court of the United States for the Eastern of Missouri, which in substance is as follows:

1st. That the amount in dispute is over $500.

2d. That your petitioner is a corporation created and organized under public laws of the General Assembly of the State of Illinois, and was, among other things, authorized to acquire or construct and maintain and operate a continuous line of railroad from the city of Chicago, in the State of Illinois, to a point in said State opposite the city of St. Louis, in the State of Missouri, and was by necessary implication and expressly authorized "to take, use, and make arrangements for the transportation of freight and passengers carried, or to be carried, upon said railroad, or otherwise, from Alton to St. Louis, Missouri, and for this

purpose to construct, own, and use such boat or boats as might be necessary."

That the Alton & St. Louis Railroad Company is a like corporation.

That the Joliet & Chicago Railroad Company is a like corporation.

That the Madison County Ferry Company is a like corporation.

3d. That prior to 28th April, 1864, the Wiggins Ferry Company was a corporation created and organized under a public act of the State of Illinois.

4th. That neither of said last named ferry companies had any power or authority to enter into any contract or stipulation with your petitioner requiring it to refrain from exercising its power to transport persons and property over said river.

5th. That on the 28th April, 1864, the said Wiggins Ferry Company and said Alton & St. Louis Railroad Company made the contract of that date.

6th. That on the 28th April, 1864, the Alton & St. Louis Railroad Company assigned and transferred said contract to petitioner, and petitioner took possession of premises, and has since held it.

7th. That the General Assembly of Iliinois passed an act of February 25th, 1867, giving the right to railroads to cross bridges which have tracks joining their tracks, and sets the act out in terms.

8th. That on the 21st February, 1867, the corporation of the Illinois & St. Louis Bridge Company was created, under laws of Illinois and Missouri; that the bridge was constructed on or about the 4th of July, 1874, and that said

bridge is a railroad bridge for the crossing of freight and passengers, and was intended as a part of a continuous railroad thoroughfare between points east and west of the Mississippi River; and that said crossing is the safest, most expeditious, and economical method and means of crossing said river with freights and passengers; and, notwithstanding the public duty imposed upon your petitioner as a carrier of freight and passengers, and the connection of rails with the bridge, etc., said plaintiffs claim that said contract imposes perpetual obligation upon said railroad company to employ and use for the transportation of freight and passengers across said Mississippi River, from Bloody Island to St. Louis, and *vice versa*, only the ferry boats and vessels of said plaintiff; and that by reason of the judgment hereinafter set forth, the defendant is estopped to inquire into or dispute the validity of said claim.

9th. Avers that the contract of April 28th, 1864, and the assignment thereof to your petitioner, so far as the same proposes to impose on petitioner such an obligation, are by the public laws and acts of the State of Illinois, made utterly void and of no effect; and that the observance of any such contract or agreement would be a violation of said public acts and laws of said State of Illinois: Nevertheless, the said plaintiff in its petition in this case, states that heretofore, to wit, on the 8th day of June, 1872, it commenced a suit in the Circuit Court of the city of St. Louis for breach of said agreement against your petitioner, and sets forth that, by reason of the adjudication in said suit in said petition mentioned, the said petitioner is estopped from insisting that said obligation and undertaking on the part of the petitioner would be in contravention of said laws of Illinois, and void and of no effect.

10th. Petitioner represents that full faith and credit has not been given to the public acts of the State of Illinois, by the Supreme Court of the State of Missouri, in the adjudi-

cation aforesaid, and that by reason of the facts herein set forth, and of such adjudication aforesaid, and of the pleading thereof as an estoppel in the manner set forth in plaintiff's petition, this suit is one arising under the Constitution and laws of the United States.

Accompanying said petition are acts of the State of Illinois, creating or giving power to said railroads mentioned in said petition; also the contract made by Wiggins Ferry Company with the Alton and St. Louis Railroad Company, dated the 28th April, 1864, with the assignment of it by the Alton and St. Louis Railroad Company to the defendant, the Chicago and Alton Railroad Company.

An act of the State of Illinois to incorporate the Madison County Ferry Company, and also the act of the State of Illinois incorporating the Wiggins Ferry Company, with an act of the State of Illinois entitled, "An act to facilitate travel and transportation," approved February 25, 1869.

The said Circuit Court of the city of St. Louis ordered, upon the filing of its bond by defendant, with approved security, that the clerk certify a full and complete transcript in each of the cases to the Circuit Court of the United States for the Eastern District of Missouri, and said bond being approved, said transcript was made, and each of said cases were removed to said Circuit Court of the United States.

At the next term of the Circuit Court of the United States for the said Eastern District of Missouri, the said Wiggins Ferry Company, the plaintiff, made a motion in each of said suits to remand the cause to the Circuit Court of the city of St. Louis, assigning reasons.

At the same term of said court, the said Circuit Court of the United States, after argument of said motion, decided in each of said causes, that said motions be sustained, and that said causes be remanded to the State court, to which action of the said Circuit Court of the United States the said defendant excepted and filed its bill of exception, and

brought its writ of error in each of said cases to this court. The Circuit Court of the United States filed its opinion upon said motion to remand, and it appears at pages 63 and 64 of the printed record, in case No. 838, and pages 61 and 62 of the printed record in No. 839.

BRIEF FOR DEFENDANT IN ERROR.

I.

As it appears from all the papers and pleadings in the cause and from the petition filed by plaintiff in error in the Circuit Court of the State, for the removal of said causes that the plaintiff and the defendant were both citizens of the State of Illinois, and as it is not in said petition for removal claimed to be the right of defendant to remove on account of citizenship, it is clear that no such right to remove exists by reason of the citizenship of the parties. It is assumed that no cause is presented for removal under the first section of the act of March 3d, 1875 (18 Statutes at Large, page 470).

II.

If the right to remove the causes from the State court exists at all, it must be on account of the subject matter and is because there is a question in dispute in the cases "arising under the Constitution or some treaty or law of the United States" authorizing removal under the 2d section of the said act of the 3d March, 1875.

This was conceded in the court below, and the cause was argued in that court on this assumption.

III.

In order to entitle a party to remove the cause from the State Court into the Federal Court under the 2d section of the act of the 3d day of March, 1875, on the ground that a question has arisen under the Constitution or law of the United States, it is necessary not only that the petition for removal should aver that a question had arisen in the case under the Constitution or law of the United States, but that it should appear either from the petition or pleadings in the

case, or both, distinctly what the question is and how, where and out of what facts the question arises which gives the court jurisdiction, so that the court can determine for itself from these facts, whether the suit does substantially involve a dispute or controversy within its jurisdiction.

The leading case in which this matter was considered by the Supreme Court of the United States is that of the *Goldwashing & Water Company* v. *Keyes, 96 U. S. R., page 199*, in which case this court held that the record was insufficient as showing any right to remove the cause. This court in that case says: "The record in the State court which includes the petition for removal should be in such a condition, when the removal takes place, as to show jurisdiction in the court into which it goes." As to the record in the cause, the court says: "They state no facts to show the right they claim, or to enable the court to see whether it necessarily depends upon the construction of the statutes."

"Before, therefore, a circuit court can be required to re-
"tain a cause under this jurisdiction it must in some form
"appear upon the record, by a statement of facts in legal and
"logical form, such as is required in good pleading (1 Chit.
"Pl. 213), that the suit is one which really and substantially
"involves a dispute or controversy as to a right which
"depends upon the construction or effect of the Constitution
"or some law or treaty of the United States."

In the case of *Insurance Company vs. Pechner, 95 U. S. R., page 183*, the court says: "His petition for removal, when filed, becomes a part of record in the cause. It should state facts which, taken in connection with such as already appear, entitle him to a transfer. If he fails in that, he has not in law shown to the State court that it cannot proceed further in the cause."

In the case of *Dowell vs. Griswold, 5 Sawyer, 39*, it is held that an allegation that the cause of action arose under the laws of the United States, is not sufficient unless the facts stated show how it arises under said laws.

The same doctrine as to the necessity in the petition for

removal of stating the exact facts, and in what manner a question has arisen under the Constitution or laws of the United States, is maintained in case of Trafton v. Nougeus, 4 Saw. 179 at page 184.

In the case of Railroad Company vs. Mississippi, 102 U. S. R., p. 135., the State of Mississippi applied to the State courts for a writ of mandamus, requiring the railroad company to remove a permanent bridge over Pearl River as an obstruction to navigation. The defendants, among other defences set up an act of Congress of March 2d, 1868, empowering the railroad company to build and maintain a bridge on its route of its railroad between New Orleans and Mobile and over Pearl River. The railroad company prayed for a removal of the causes and filed its petition, specifically setting up this act of Congress of March 28, 1868, and also upon a contract with the State of Mississippi (setting it out); that said State undertook to repudiate it and that it was a vested right resting on a contract and supported and sustained by the Constitution of the United States, and the case was one arising under the Constitution of the United States.

The railroad in its petition stated further its ground for removal in the following words: —

"Your petitioner says that the railroad and bridges are and " have been for three or more years a post road over which " the mails of the United States have been carried and are " now being carried, and as the bridge referred to is a law- " ful structure under the laws of the United States, this " suit impugns the rights, privileges, and franchises granted " by the act of Congress aforesaid, of the 2d March, 1868."

In this case the Supreme Court held that the railroad company had the right to have the cause removed into the Federal court. But in this cause the railroad company in its petition set up and specifically pointed out the act of Congress on which it relied and how the question had arisen, which it was claimed, had given the railroad the right to remove.

In *Houser vs. Clayton, 3 Woods, 275*, it is said "as no other than the defence which was set up, as the grounds of removal, will be allowed, there must appear in the petition and pleadings clearly what it is and that it involves a Federal question."

IV.

No question is shown in the causes arising under the Constitution or any law of the United States, either by the pleadings or by the petition for removal.

We have shown what, by the decisions of this court, and other courts, is required should appear in order to authorize a removal. We will now examine whether the record conforms to such requirements.

Plaintiff's petition claims damages for the non-performance of an agreement entered into by it with the Alton and St. Louis Railroad, and by it assigned to the defendant, power being given in said agreement thus to assign to defendant. No statute of the United States was called for or referred to. Only a former adjudication upon the same contract between the same parties is set up as an estoppel.

In the answer the defendant denies the plaintiff's construction of the contract, sets up that if the agreement is susceptible of such construction, it is in violation of the laws of Illinois, and is void; denies that it has not performed the contract, admits the assignment of the agreement by the Alton and St. Louis Railroad Company to defendant, subject to the performance and payment of the covenants and rents, but avers that it is not liable on any covenants for ferriage, and states that since the making of the contract, improved methods of transportation over the river have been established, which defendant was entitled to use, and any provisions in the contract which would prevent the defendant from using the same, was against public policy and void. But in the answer there is no allusion to or mention of the Constitution of the United States, or any law thereof.

In the petition for removal there is the bare averment in the first part of the petition in these words: "Your petitioner further represents that said suit is one arising under the Constitution and laws of the United States in manner following" — and then goes on to set out certain rights of the defendant, as derived under various acts of the State of Illinois, and says that the observance of such contract as is alleged by plaintiff would be a violation of said public acts and laws of said State of Illinois, and that by such adjudication in said former suit the petitioner is precluded and estopped from insisting that such supposed obligation on part of petitioner is in contravention of the laws of the State of Illinois and is void. The way in which a question is supposed to arise under the Constitution and laws of the United States is thus stated: "Your petitioner further represents "that full faith and credit has not been given to the *public* "*acts of the State of Illinois* by the Supreme Court of the "State of Missouri in the adjudication aforesaid, and that "by reason of the facts herein set forth and of such adju- "dication and of the pleadings thereof, as an estoppel in the "manner set forth in plaintiff's petition, the suit is one "arising under the Constitution and laws of the United "States."

There is therefore no law of the United States in relation to which a question in this cause has arisen, and though it is said that a question has arisen under the Constitution of the United States in that the Supreme Court of Missouri has not given full faith and credit to the public acts of the State of Illinois, which the petitioner had set forth, it altogether fails to show how it is that in said adjudication the Supreme Court of the State of Missouri had failed to give full faith and credit to such public acts, so that the court can see for itself whether acts of Illinois were considered and determined therein and whether it did so fail.

So that if the construction of the first section of the fourth article of the Constitution by the plaintiff in error be correct, yet it has not shown where, how, or in what manner the Supreme Court of Missouri has failed to give full faith

and credit to the public acts of the State of Illinois. The Federal courts cannot see what it is in the Illinois Constitution, statutes, and decisions to which the Supreme Court of Missouri has not given full faith and credit. This becomes the more important as we insist that no such failure, as is supposed, exists.

The averment in the petition for removal that the suit is one arising under the Constitution and laws of the United States amounts to nothing, nor does the averment therein "that full faith and credit has not been given to the public acts of the State of Illinois by the Supreme Court of the State of Missouri in the adjudication in the former suit, and that by reason of such adjudication and the pleading of the said former adjudication by plaintiff as an estoppel in said suit, the suit is one arising under the Constitution and laws of the United States."

The mere allegation that the cause of action or defence arises out of the Constitution or a law of the United States is only a conclusion of the petitioner, and no removal can be made on that. The statute does not provide that whenever a suitor will say that the case involves the construction of the Constitution or law of the United States the case shall be removed, but declares that if it appears from the record that such is the case, then it may be removed.

Gold Washing and Water Company *vs.* Keyes, 96 U. S. R. 199;
Dowell *vs.* Griswold, 5 Sawyer, 139;

It is not even stated in the pleadings or the petition for removal that in the adjudication in the former suit, complained of, that the construction as put by the Supreme Court of the State of Missouri on those acts is different from that given by the Supreme Court of the State of Illinois thereon, or that there had been any decision of the Supreme Court of the State of Illinois upon said public acts of the State of Illinois. It is simply averred that full faith

and credit had not been given to the public acts of the State of Illinois by the Supreme Court of the State of Missouri, in that adjudication, but how or in what is not stated. If we may indulge in conjecture, it must be either because the Supreme Court of Missouri had not construed these acts of the State of Illinois, as the petitioner desired, or because that court had decided that these acts in no manner affected the question at issue in that case; but we are left in utter darkness, as to how it is supposed to have been done.

V.

But the allegation "that full faith and credit has not been given to the public acts of the State of Illinois by the Supreme Court of the State of Missouri in the adjudication aforesaid," presents no Federal question within the meaning of the statute of the United States authorizing removal of a cause into the Federal court.

That decision contravened no part of the Constitution of the Unitted Staes. The language of the Constitution is: "Full faith and credit shall be given in each State to "the public acts, records, and judicial proceeding, of every "other State, and the Congress may by general laws pre-"scribe the manner in which such acts and records shall "be proved and the effect thereof."

What is meant as to the *public acts* of the State, where the article requires that full faith and credit shall be given to them in every State? If the public acts of a State create certain persons a corporation of that State, then it is to be taken that the public act proved as provided by the act of Congress is to be received as proving the fact of such incorporation in that State in the courts of every other State.

As to the "records and judicial proceedings," the true meaning of that provision is that when authenticated, as required by the acts of Congress, they should be not only *prima facie* evidence of the rights they purported to have

settled, but have positive and absolute verity, such as they had in the State where they originated.

2 'Story on the Constitution (4 ed.), sect. 1310, p. 185.

The scope and effect of this provision of the Constitution has been the subject of judicial decision in this court, and among others in the cases of Wells *v.* Duryee, 7 Cranch, 481, and in McElmoyle *v.* Cohen, 16 Peters, 312. As to judgments the court decided in these cases that full faith and credit had been given when the judgment had been put, *as to its conclusiveness* between the parties upon the same footing as domestic judgments; that is, that it is not examinable upon its merits. In the latter case, at page 325, the court says: "This concession admits of the conclusion "that under the first section of the 4th article of the Con- "stitution, judgments out of the State in which they "are rendered are only evidence in a sister State that "the subject matter of the suit has become a debt of "record which cannot be avoided but by the plea of *nul* "*tiel* record." This is the whole effect that this provision of the Constitution, and the subsequent legislation of Congress carrying out that provision has, according to the decisions of this court, had upon judgments rendered in another State. Congress has not attempted to declare what is the effect of the "public" acts of one State pleaded in other States, if by "public acts" are meant the statutes of the State.

The Constitution of the United States does not require that the decisions of the Courts of the several States shall conform to each other. We believe the present is the first instance in which the suggestion has been made. But it is not alleged that there is any conflict between the rulings of these courts.

The only conflict apparent from the record is this: *The Railroad Company is not satisfied with the decision of the*

Missouri court. It has claimed for its charter an effect which the Missouri court will not concede to it; and hence its supposed right to remove the suit into the Federal court. The decision complained of is "Wiggins Ferry Company vs. Chicago & Alton Railroad Company," 73 Mo. R. 389. If this proposition is sustained it will extend the jurisdiction of this court into a vast field of matter never before imagined to be possible.

But whatever construction be given to the first section of the fourth article of the Constitution, the petition for removal itself shows that no Federal question is involved in this case. The way in which it is supposed that a question has arisen under the Constitution and laws of the United States, is thus stated in the petition for removal: "Never-
"theless, the said plaintiff claims in it, said petition, that
"heretofore, to wit, on the 8th day of June, 1872, it com-
"menced a suit in the Circuit Court of the City of St.
"Louis, Mo., against your petitioner for alleged breaches
"of said agreement, and that, by reason of *the adjudication*
"*in said suit, in said petition mentioned and set forth,*
"*your petitioner is precluded and estopped from* insisting
"that any such supposed obligation or undertaking, on the
"part of your petitioner, would have been in contravention
"of the laws of the State of Illinois, and utterly null and
"void, and of no effect."

"Your petitioner further represents that full faith and
"credit has not been given to the public acts of the State
"of Illinois by the Supreme Court of the State of Missouri
"*in the adjudication* aforesaid, and that, by reason of the
"facts herein set forth, and of such *adjudication*, and of
"the pleading thereof *as an estoppel*, in the manner set forth
"in plaintiff's petition, this suit is one arising under the
"Constitution and laws of the United States."

It is not, therefore, the setting up in defendant's answer in these suits of any law of the United States or any provision of its Constitution as a defence. That it is claimed that "the suit is one arising under the Constitution and

laws of the United States." It is not because there is any conflict between the decisions of the Supreme Court of the State of Missouri and the Supreme Court of the State of Illinois in the construction of the "public acts" of Illinois, set out in said petition for removal, for no such conflict is pretended; but what is claimed to make these suits — "*suits arising under the Constitution and the laws of the United States*" — is the fact that the plaintiff has pleaded this former adjudication as *an estoppel*.

How can this present a Federal question in these suits?

The question raised by pleading the former adjudication by the plaintiff as an estoppel is not whether that question was rightly or wrongly decided, but whether from the situation of the parties to it and its subject matter, the plaintiff can set it up in these suits as binding and conclusive upon the party defendant. By pleading it as an estoppel, the plaintiff says, in effect: We are both parties to that suit, and the subject matter litigated in that suit is the same litigated in this suit, and final determination has been had between us on the question in this former judgment, and you, the defendant, are concluded by the former judgment, and we set up that judgment as an estoppel against you in the suit. It makes no difference whether this former adjudication was properly decided or not, "whether due faith and credit" was in that adjudication given to the "public acts" of the State of Illinois or not. It is enough for us that the subject matter of the litigation, and the parties to it, and the question raised therein are the same as in this; the defendant is concluded and estopped by it.

It is said in *section 26 of Herman on Estoppel*: "If an action be brought, and the merits of the question be discussed between the parties, and a final judgment obtained by either, the parties are concluded and cannot canvass the same question again in another action. * * * It is *res adjudicata*, and the judgment of the court imparts absolute verity, whatever the question involved, whether it be the interpretation of a private contract, the legality of an in-

dividual act, *or the validity of a legislative enactment*, the conclusiveness is the same."

If it be a record conclusive between the parties it cannot be denied, but by a plea of *nul tiel record*," 7 Cranch, 481.

No question of whether the former judgment thus pleaded as an estoppel can arise here, but simply in relation to its conclusiveness. No Federal question is presented. It is, in fact, an attempt to do away with the conclusiveness of that judgment, and a method devised of having that judgment reviewed which the defendant could not obtain by writ of error. It is but an attempt to dispute the conclusiveness of the judgment, which is pleaded as an estoppel by the plaintiff. That judgment is just as conclusive upon the parties to it, whether it involves the consideration of the effect of a statute of another State, as of a contract between the parties, or of any other matter in evidence in the case. The judgment conclusively proves as to the parties to it, that full faith and credit has been given to the public acts of the State of Illinois, if given in evidence, and the only way to overthrow that conclusiveness is to sue out a writ of error and reverse the judgment. That judgment cannot be re-examined by an averment that in the making of it the Supreme Court of the State of Missouri did not give full faith and credit to the public acts of the State of Illinois. This is only an averment that in making that decision the Supreme Court of the State of Missouri committed error.

As it is not pretended that any question arises in this suit under the Constitution or laws of the United States, unless it is brought into them by the fact of the plaintiff's setting up the former judgment in its favor as an estoppel against the defendants in these suits, it would seem that the petition itself of defendant shows that no Federal question arises under the Constitution and laws of the United States.

Glover and Shepley
Attys for Deft in Error

OFFICE SUPREME COURT U.S.
FILED
NOV 20 1882
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

THE SOUTHERN EXPRESS COMPANY,
Appellee,

vs.

THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant.

No. 914.

MOTION TO DISMISS APPEAL,

AND

PETITION AND BRIEF

IN SUPPORT THEREOF.

GLOVER & SHEPLEY,
S. M. BRECKINRIDGE,
CLARENCE A. SEWARD,
F. E. WHITFIELD,
Of Counsel for the Motion.

NEW YORK:
DOUGLAS TAYLOR, BOOK AND LAW PRINTER, 89 NASSAU ST., COR. FULTON.
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